2633.

SUPREME COURT OF THE UNITED STATES.

No. 191.

F. D. CONRAD, PLAINTIFF IN ERROR,

vs.

DAVID GRIFFEY.

IN ERROR TO THE CIRCUIT COURT, UNITED STATES, FOR LOUISIANA.

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GIDEON, Printer.

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United States circuit court, fifth circuit and district of Louisiana.

DAVID GRIFFEY
vs. } No. 1556.
FREDERICK D. CONRAD.

Pleas and proceedings before the honorable circuit court, fifth circuit and district of Louisiana, at a circuit court of the United States, in and for the fifth circuit and district aforesaid, being the December term, A. D. one thousand eight hundred and forty-six, of said court, held at the city of New Orleans aforesaid, on the sixth day of February, A. D. 1849.

Be it remembered, that heretofore, to wit, on the twenty-third day of December, A. D. 1846, came David Griffey, by his attorneys, Messrs. Thomas J. Durant and Benjamin B. Lee, in the clerk's office of said court, and filed a petition, which is in the words and figures following, to wit:

To the honorable the circuit court of the United States, in and for the fifth circuit, and the State of Louisiana.

The petition of David Griffey, who is a citizen of the State of Ohio, and a resident of the city of Cincinnati, in that State, respectfully shows, that Frederic D. Conrad, a citizen of the State of *the State of* Louisiana, and a resident of the parish of East Baton Rouge, in this State, is justly indebted unto petitioner in the full sum of three thousand seven hundred and eighty-one dollars and fifty-eight cents, for this, to wit:

That petitioner did, on the twenty-sixth day of March, in the year 1845, in the parish of East Baton Rouge aforesaid, enter into a written contract with the said Conrad to furnish, deliver, and set up, on the plantation of said Conrad, in said parish, a steam engine and sugar mill, boilers, wheels, cane carriers, and all other things necessary for a sugar mill, all of which was to be done by petitioner so as to be fully ready for the operation of grinding sugar cane in the month of September, 1845. And your petitioner was to have the right of appointing the engineer to run the mill during the first season of its use, at the expense of said Conrad; and for all of this the said Conrad agreed to pay petitioner the sum of six thousand six hundred and fifty dollars in the following manner, to wit, when the said engine and its appurtenances were delivered to the said Conrad on the levee, at his plantation, in the parish aforesaid, the said Conrad was immediately thereupon to pay to petitioner, at the counting-house of Adams and Whitall, in the city of New Orleans, three thousand three hundred dollars in cash, and for the remainder of the price the said Conrad agreed to give his note, after he had finished grinding his crop, that is, the crop

first ground after putting up the said engine and its appurtenances, in favor of petitioner, payable on the first day of March, 1846, in New Orleans, at the counting-house of Messrs. Adams and Whitall, of this city.

And your petitioner further shews, that he furnished extra work and labor, over and above the stipulations of the agreement, consisting of casting one set of grate bars, casting one furnace mouth, forging screw, wrench hooks, links, plates, nails, &c ; casting a nut, cutting and turning a screw and screw nut, two triple tackle blocks, casting forty sash weights, casting four backs and eight jams, furnishing three hundred feet of rope, and a pattern for back and jams; all of which extra work was done at the request, and with the knowledge and consent, of the said F. D. Conrad.

Your petitioner further shews, that all the facts and allegations above set forth will more fully appear by reference to the aforesaid contract, signed by both petitioner and said Conrad, marked A; and also to a bill of items marked B, both of which are annexed to this petition to form a part thereof.

Now, your petitioner further shews, that he has fully complied with his portion of the contract, except that the machinery arrived at Conrad's plantation a few days beyond the contract time, owing to a sudden and unexpected fall of the water in the Ohio river, though shipment had been made in due time from Cincinnati; and the said Conrad waived all objection on that score, and has done every thing which by the said contract he was bound to do; and that said Conrad paid him on account of the mill appurtenances the sum of three thousand three hundred dollars, but the balance of three thousand seven hundred and eighty-one dollars and fifty-eight cents he refuses to pay, though thereunto amicably requested.

Wherefore petitioner prays, that the premises being considered, the said Frederick Daniel Conrad be cited to appear before this honorable court, and that after due proceedings had he may be condemned to pay petitioner the aforesaid sum of three thousand seven hundred and eighty-one dollars and fifty-eight cents; and all interest that may be due thereon, at the rate of five per cent. per annum, and all damages which petitioner may have suffered from the injurious acts of said Conrad; and he prays for all such other and further relief as the nature of his case may require and law permit.

THOMAS J. DURANT,
BENJ. B. LEE, *Attorneys*.

Copy of agreement and bill annexed, referred to in petition.

A.

STATE OF LOUISIANA,
Parish of East Baton Rouge, March 26th, 1845.

The following contract, made by and between Frederick Daniel Conrad of the said parish, and David Griffey, by his agent Aaron

Coon (the said Griffey and Coon both of the city of Cincinnati, State of Ohio) witnesseth: That for and in consideration of the sum hereinafter mentioned, the said David Griffey engages and contracts to make, construct, furnish and deliver, to the said Conrad, and to put up for him, a steam engine and sugar mill of the description hereinafter given, to wit, an engine cylinder thirteen inches in diameter, four feet and a half stroke, with metallic packing; three boilers thirty-two inches in diameter, and thirty feet in length; a sugar mill to consist of three rollers, each five feet in length, twenty-eight inches in diameter, and not less than three inches thick, and to have the crown wheels on the ends of the rollers next to the fly wheel; the shafts of the rollers to be of wrought iron well and firmly fitted and fastened in the rollers.

The shaft of the top roller to be nine inches in diameter, and the shafts of the other two rollers to be each eight inches in diameter; a spur or driving wheel eleven feet two and one-half inches in diameter, pitch circle eight inches, face all iron; a fly wheel sixteen feet in diameter, all iron; a cane carrier of the usual length furnished to engines and mills of like dimensions with the present; also, an additional cane carrier, to be connected with the above mentioned cane carrier, similar to the horizontal cane carrier attached to the engine and sugar mill of Mr. Sosthene Allain, and of the same length, supposed to be between sixty and seventy feet; both of the aforesaid cane carriers to be three and a half feet wide, together with all the drums, chains, rollers, and other fixtures necessary to make the said cane carriers complete; two hundred and twenty-five feet of strong copper pipe, to reach from the pond to the side of the engine house, and sufficient waste pipe to the heater to convey the water outside the house; in addition, to furnish one spare pinion, one spare segment, and two spare crown wheels, one for the bottom and one for the top roller, and also to furnish every other piece, part, or thing, to make said engine and sugar mill finished and complete in every part. And the said David Griffey agrees and contracts to put up the aforesaid engine and sugar mill on substantial iron sills, with cast plates on the walls for securing the bolt heads, using no timber in or upon the walls of either mill or engine, except the spring beams for the top roller, both of which shall be of wood. And it is promised that said iron sills shall constitute a solid and sufficient foundation for said mill and engine. And the said Griffey contracts and engages, that the said boilers, engine, mill, and cane carriers, &c., and every thing appertaining to them, and necessary to their full and complete operation, shall be of the best materials, workmanship, and finish, and shall be furnished and put up so as to be equal in every respect, in quality, and strength, and smoothness of movement, to any sugar mill and engine ever put up by the said Aaron Coon in the State of Louisiana. And the said engine, mill, boilers, wheels, cane carriers, &c., &c., and every thing, part, and piece belonging to them, to be put complete, in a complete, solid, efficient, and workmanlike manner, on the plantation of said Conrad, where he now resides, on the River

Mississippi, in the parish of East Baton Rouge, and to be so and there put up in his sugar house, so as to be fully ready for the operation of grinding sugar cane in the month of September next; and the said Griffey to have the privilege of appointing the engineer to run the engine during the rolling of the first crop, at the expense of the said Conrad, but the rate of wages not to exceed one hundred dollars per month; provided, also, that the said Conrad is to be informed by the fifteenth of August who the person is that is so engaged; and provided, also, that the said engineer shall be on the plantation of said Conrad to take charge of the engine when the said Conrad shall be ready to commence rolling; and provided, also, that the said Conrad shall have a right to dismiss said engineer when he shall deem it proper and expedient.

In consideration of the above, and as the price of furnishing, delivering, and setting up, as aforesaid, of the said engine, mill, boilers, wheels, cane carriers, &c., &c., and all the said machinery belonging to the said engine and mill, and of all the parts and pieces which are necessary to complete the same and put them into thorough operation, and to maintain them in the same, according to the intent of this contract, the said Conrad engages to pay to the said Griffey the sum of six thousand six hundred and fifty dollars, in the following manner, to wit, when the said engine, mill, boilers, cane carriers, wheels, and all the machinery, pieces, and parts belonging to the same, shall be delivered to the said Conrad on the levee at his said plantation, he shall immediately thereafter pay to the said Griffey, at the counting-house of Adams & Whitall, in New Orleans, the sum of three thousand three hundred dollars; and for the balance of said price the said Conrad promises that, after he has finished grinding his crop, he will give his note to said Griffey, payable on the 1st of March, (1846,) eighteen hundred and forty-six, in New Orleans, at the counting-house of Messrs. Adams & Whithall.

Thus done, executed, and signed in double, each party retaining an original.

The word "up," interlined on the second page, above the third line from the bottom, interlined before signing.

F. D. CONRAD,
DAVID GRIFFEY,
By AARON COON.

Witness—W. G. WILLIAMS.

Schedule B.

F. D. Conrad

To David Griffey, Dr.

1845.			
May 17	To engine as per contract - -	$6,650 00	
	To casting one set of grate bars, 6,070 lbs., *a* 3½ c. - - - -	212 45	
	To casting one furnace mouth fitted	35 00	
	To forging screw, wrench, hooks, links, plates, nails, &c., complete, 201 lbs., *a* 18 c. - - -	36 18	
	To casting nut, 13 lbs., *a* 5 c. -	65	
	To cutting screw and turning screw and cutting nut - - -	6 00	
			$6,940 28
	To 2 triple tackle blocks - -	46 40	
	To casting 40 sash weights, 360 lbs., *a* 3¾ - - - - -	13 50	
	To do. 4 backs and jams, 138 lbs., *a* 4¼ - - - - -	58 90	
	To rope, 300 feet, 1¼-in. diameter, 150 lbs., 13 c. - - - -	19 50	
Aug. 31	To pattern for back and jams -	3 00	
			141 30
			$7,081 58

E. E.

And afterwards, to wit, on the 22d day of January, A. D. 1847, this answer to the above petition was filed, which reads in the words and figures following, to wit:

Answer.

DAVID GRIFFEY
vs.
F. D. CONRAD.

United States circuit court, for the fifth circuit and State of Louisiana.

The answer of Frederick D. Conrad, to the petition filed against him in the above entitled cause, humbly shows, that he denies all and singular the allegations in said petition contained, except such as may be hereinafter expressly admitted. And further answering defendant avers, that true it is that he entered into the contract annexed to and recited in petition, and that he paid on account thereof the sum of money therein stated to have been paid by him; but this respondent avers that

said plaintiff, on his part, violated his contract, and failed to comply with the stipulations thereof, to the great loss and damage of this respondent, who now proceeds specially to set forth the various defects of the work contracted to be furnished by plaintiff, and the various points in which his contract was violated.

1st. It was specially stipulated in said agreement that said plaintiff should furnish and put up the work specified in the contract, ready for the operation of grinding cane, in the month of September, 1845; that this agreement necessarily implied, and it was so understood and verbally agreed between the parties, that the principal and heaviest parts of the machinery to be furnished should be delivered on defendant's plantation, in the month of June or July, at furtherest, to the end that he might prepare the brick work and other work necessary for erecting the machinery; it being well understood that it would not be required of him to put up such brick or other work before the arrival of the new engine and mill, inasmuch as it would be extreme imprudence and rashness in any planter to destroy his old works, and prepare for new works, until the latter should be received on his plantation. But the said plaintiff violated his engagements without any just or legal cause or excuse, and did not land his new engine and machinery on defendant's plantation till the ninth of September.

2d. That, by reason of the delay in delivering said work on the plantation, the brick work, which was necessary for placing it, and which was only made after the machinery arrived, was too green, had not sufficient time to settle, and could not possibly be sufficiently secure and solid to keep the machinery steadily in its place when it commenced working the crop; so that the engine and mill, even if it had been well put up originally, would probably have got out of plumb prior to the end of the working season.

3d. That the engine and machinery were badly put up by the plaintiff, being, in the technical language of mechanics, neither plumb nor square; and that the cane carrier was far inferior in workmanship to that agreed for in the contract.

4th. That the housings, and screws of the housings, of the rollers for the mill were too weak, and were insufficient for the work required, so that they broke on one side, and did the work of expressing the juice from the cane so imperfectly, that large quantities of juice were lost, and the work of making sugar so retarded that much injury and loss accrued therefrom.

5th. That the cast iron bed, or foundation, on which the work was placed, was entirely too weak and defective, so that when the grinding commenced, the mill began to work gradually out of its place towards the engine, and it became necessary, by stays of iron rod bolts, and screws, to keep it back in its place.

Defendant avers, that by reason of all the above difficulties and defects in the working of the machinery, he was so retarded in getting off his crop, that when the frosts and ice usual at the commencement of winter occurred, a large portion of his cane was frozen and destroyed,

in whole or in part; and which cane would have been manufactured into sugar before the occurrence of said frosts except for said delays; and that, by reason of all the premises, he has suffered loss and damages to the amount of ten thousand dollars.

Wherefore, respondent now pleading in reconvention, prays that plaintiff's suit be dismissed at his costs, and that respondent have judgment against plaintiffs for said sum of ten thousand dollars and costs, and for all other just relief.

BENJAMIN & MICON, *Attorneys.*

And afterwards, to wit, on the 13th day of February, A. D. 1847, the following motion was made and entered of record, which reads in these words and figures, to wit:

D. GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

On motion of Thomas J. Durant, of counsel for plaintiff, and on showing to the court that Daniel Edwards, Isaac Edwards, and Leonard M. Nutts, are material witnesses for plaintiff, and that they reside in Cincinnati, Ohio:

It is ordered by the court, that a commission issue to take their testimony, addressed to any officers authorized to administer oaths by the laws of Ohio.

And afterwards, to wit, on the 15th day of February, A. D. 1847, this order was entered upon the minutes of said court, which reads in these words and figures following, to wit:

On motion of Thomas J. Durant, of counsel for plaintiff, and on suggesting to the court that Aaron Coons and John Haney are material witnesses for the plaintiff, that they both reside out of the jurisdiction of this honorable court, that they are now temporarily in the city of New Orleans, and that they are about to depart before this case can be brought on for trial: It is therefore ordered by the court, that the testimony of said witnesses be taken before any United States commissioner, to be used upon the trial of this cause.

And afterwards, to wit, on the 16th day of October, A. D. 1847, the following motion was made and entered of record, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

On motion of Thomas J. Durant, of counsel for plaintiff, in the above named case, and on showing to the court that the commission issued herein to take the testimony in behalf of plaintiff in Cincinnati, had been duly executed, and returned in court:

It is thereupon ordered by the court, that W. C. Micon, esq., of counsel for defendant, do show cause on Tuesday, the second day of

November, 1847, at 10 o'clock, a. m., why the testimony taken in this case, by virtue of the commission aforesaid, should not be read in evidence on the trial.

And afterwards, to wit, on the 12th of November, A. D. 1847, the following order was entered upon the minutes, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

On motion of Thomas J. Durant, of counsel for plaintiff, it is ordered, that the rule taken herein for the introduction of certain testimony be renewed and made returnable for Tuesday, the 16th day of November, 1847, at 10 o'clock, a. m.

And afterwards, to wit, on the 22d day of November, A. D. 1847, this order was made a matter of record, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

On motion of Thomas J. Durant, esq., of counsel for plaintiff:

It is ordered, that the rule taken herein for the admission of certain testimony be renewed, and made returnable for Saturday, the 27th instant, at 10 o'clock, a. m.

And afterwards, to wit, on the 27th day of November, A. D. 1847, this order was entered upon the minutes of said court, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

The rule taken herein at a former day of this court, by the counsel for the plaintiff, on the counsel for the defendants, to show cause why the testimony taken in this case by virtue of commissions issued herein, should not be read in evidence on the trial of the cause, being returnable this day, was taken up. T. J. Durant, esq., appearing for the plaintiff, and J. P. Benjamin for the defendant; when, after hearing the argument of counsel—

It is ordered by the court, that the said rule be and the same is hereby made absolute; and that the testimony taken as aforesaid be admitted and read in evidence on the trial of this cause.

And afterwards, to wit, on the 14th day of February, A. D. 1848, the following order was entered upon the minutes of said court, which reads as follows, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

On motion of W. C. Micon, esq., it is ordered that the commissions on file in this cause be opened.

And afterwards, to wit, on the 19th day of February, A. D. 1848, the following order was entered upon the minutes of this court, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

On motion of Thomas J. Durant, of counsel for Griffey, and on showing that a commission to take testimony in this case, formerly directed to F. N. Haralson, esq., has been returned into court, it is ordered that the commission be opened.

And afterwards, to wit, on the 21st day of February, A. D. 1848, the following order was entered upon the minutes, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

The trial of this case being assigned for this day, appeared in court the respective parties by their counsel, when the following jury were empannelled and sworn to try the issue joined between the parties according to law and the evidence, to wit, Victor Benit, F. Levasseur, Louis Adams, J. Castellano, Henry Tete, C. Toledano, Jacob Stein, M. Riordan, John H. Owen, N. E. Bailey, James Connolly, Richard D. Barry. Whereupon said case was opened to the court and jury by T. J. Durant, esq., for the plaintiff, and J. P. Benjamin, esq., for the defendant; the trial of said cause having proceeded until 3 o'clock, p. m., it was thereupon considered by the court, that said case be and the same is hereby continued until Wednesday, the 23d instant, at 10 o'clock, a. m.; and that the jury be discharged until that time.

And afterwards, to wit, on the 23d day of February, A. D. 1848, the following order was entered upon the minutes of the court, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

The trial of this case being resumed, on calling the jury, J. H. Owen, a member thereof, was found absent, and on the suggestion of his illness, said juror was excused, and the parties agreed to proceed before the eleven jurors now present in court. Thereupon the evidence and argument having closed, the court appointed C. Toledano the foreman of said jury, who retired under charge of the court to deliberate upon their verdict, and soon after returned with the following verdict, viz., "The jury find a verdict in favor of the plaintiff, for the sum of three thousand dollars without interest. C. TOLEDANO, *Foreman.*
New Orleans, 23d February, 1848.

Whereupon it was considered by the court, that said verdict be and the same is hereby recorded, and that the plaintiff, David Griffey, do have and recover judgment against the defendant, F. D. Conrad, for the sum of three thousand dollars, and the costs of this suit to be taxed.

And afterwards, to wit, on the 25th day of February, A. D. 1848, the following motion was entered of record, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

On motion of Benjamin and Micon, of counsel for the defendant—

It is ordered that the plaintiff show cause on Monday, the 5th of March next, at ten o'clock, a. m., why a new trial be not granted in this case, on the ground—

1st. That there was conclusive evidence before the jury that the damages sustained by the defendant exceeded the amount of the plaintiff's demand, and that the jury erred in refusing to allow said damages according to the evidence before them.

2nd. That by the evidence adduced the plaintiff was not entitled to recover, because his work was not done in the manner, nor within the time stipulated by his contract.

And afterwards, to wit, on the sixth day of March, A. D. 1848, the following order was entered upon the minutes of this court, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

The motion herein made by the defendant for a new trial in this cause having been made returnable this day, said motion was taken up and argued by counsel, and submitted to the court, who took the same under advisement.

And afterwards, to wit, on the 8th day of March, A. D. 1848, the following order was entered upon the minutes of said court, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

The rule heretofore taken by defendant for a new trial in this case having been argued and submitted to his honor, Theo. H. McCaleb, district judge, and the court having maturely considered the same—

It is ordered, adjudged, and decreed, that said motion be sustained, and a new trial be granted herein.

And afterwards, to wit, on the 15th day of May, A. D. 1848, the following order was entered upon the minutes of this court, which reads in these words and figures, to wit:

2 B 37
13

DAVID GRIFFEY
vs.
F. D. CONRAD. } No. 1556.

The trial of this cause being assigned for this day by consent of counsel, it is ordered that this cause be continued until Thursday next, the 18th instant.

And afterwards, to wit, on the 18th day of May, A. D. 1848, this order was entered upon the minutes of the court, which reads in the words and figures following, to wit:

DAVID GRIFFEY
vs.
F. D. CONRAD. } No. 1556.

This cause having been continued for trial this day, it is ordered that said cause be continued until Monday, the 22d instant.

And afterwards, to wit, on the 22d day of May, A. D. 1848, the following order was entered upon the minutes of said court, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs.
F. D. CONRAD. } No. 1556.

The trial of this cause being continued until this day, appeared the respective parties by their counsel, T. J. Durant, esq., for the plaintiff, and W. C. Micon, esq., for the defendant. Whereupon said case was taken up, and by consent the same was continued until to-morrow, at 10 o'clock, a. m.

And afterwards, to wit, on the 16th day of January, A. D. 1849, the following order was entered upon the minutes of said court, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs.
F. D. CONRAD. } No. 1556.

The trial of this cause being assigned for this day, when, for want of time, it is ordered that the same be continued until a further day.

Afterwards, to wit, on the 26th day of January, A. D. 1849, the following order was entered upon the minutes of said court, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs.
F. D. CONRAD. } No. 1556.

By consent of counsel on both sides, this cause is fixed for trial for Tuesday, the 16th day of February next.

And afterwards, to wit, on the sixth day of February, A. D. 1849, the following order was entered upon the minutes of this court, which reads in these words and figures, to wit:

DAVID GRIFFEY vs. F. D. CONRAD. } No. 1556.

The trial of this case being assigned for this day, appeared the respective parties by their counsel, when the following jury were empannelled and sworn to try the issue joined between the parties, to wit: Edmund Faures, J. B. Preau, Ed. Fauchet, A. T. Ezekiel, Gas. Barnue, H. D. Richardson, A. Dismaris, jr., Geo. Legendre, C. Schneider, John Morris, Robert Park, and Bernard Cohen. Whereupon it was considered by the court, that this cause be, and the same is hereby, continued until to-morrow, the 7th of February, 1849, at 10 o'clock, a. m., and the jury be discharged until that hour.

Affidavit of F. D. Conrad for continuance.

GRIFFEY vs. CONRAD. } No. 1556.

Personally appeared F. B. Conrad, the defendant, who, being duly sworn, deposes, that Thomas Peterson is a material witness for his defence in this case. That said witness resides in New Orleans, and works at the Leeds foundry; that a subpœna was left for him at said foundry, and the marshal's return is that he is absent; that deponent cannot safely go to trial without his testimony; that he expects to obtain it if the case be postponed for a few days, until the return of said witness, or until his deposition can be taken, and that this affidavit is not made for delay only, but to obtain said testimony. Deponent further states, that the housings, or frame work of the mill, furnished by the plaintiff, having been broken, the said Peterson was employed to put up the new housings, and his testimony is important to prove the condition and strength of those originally furnished, and that they were not of sufficient strength for the said mill. Deponent further states, that the housings furnished by plaintiff in 1845 broke; that said plaintiff supplied another set in 1846, which also broke; that deponent then procured a third set from Leeds & Co., of New Orleans, which last set was that put up by said Peterson; that said Peterson examined both sets furnished by the plaintiff, and that he expects to prove by said witness that, in the opinion of said witness, Peterson hath said sets of housings furnished by plaintiffs were insufficient, and not strong enough for the mill and engine; that those furnished by said Leeds were much heavier and stronger than either set furnished by the plaintiff, and that said witness considered them none too strong for the purpose. That deponent states what he expects to prove by said witness from the statements of said witness made to him.

F. D. CONRAD.

Sworn to and subscribed before me, in open court, this 7th day of February, 1849.

ED. RANDOLPH, *Clerk.*

And afterwards, to wit, on the 7th day of February, A. D. 1849, the following order was entered upon the minutes of said court, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

This case, as continued from yesterday, was, upon the defendant making affidavit to the absence of a material witness, which affidavit was reduced to writing and filed in this cause, ordered that said case be continued until Monday, the 19th instant.

And afterwards, to wit, on the 19th day of February, A. D. 1849, the following order was entered upon the minutes of said court, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

H'y Richardson, one of the jurors heretofore sworn herein, being absent, it is agreed between the parties represented by Thomas J. Durant, esq., for plaintiff, and W. C. Micon, esq., for defendant, that the said H'y Richardson be discharged, and that J. R. Conway be sworn in his place, and the court made order accordingly; and the said J. R. Conway [being] dully called, empannelled, and sworn, the trial of the case then proceeded until 3 o'clock, p. m.; whereupon, the court ordered that the trial of this case be continued until to-morrow at 10 o'clock, a. m., and that the jury be discharged until same hour.

And afterwards, to wit, on the 20th day of February, A. D. 1849, the following order was entered on the minutes of said court, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

The trial of this cause was resumed in pursuance of adjournment from yesterday, when T. J. Durant, esq., for plaintiff, moved the court to strike out from defendant's answer all that portion which makes a reconventional demand of damages to the extent of ten thousand dollars upon plaintiff, on the ground that such a demand is not warranted by the laws of the United States, regulating the practice of the circuit courts; and the court overruling the motion, the trial proceeded; and after hearing evidence and argument of counsel, the case was submitted to the jury, who retired to deliberate upon their verdict, under the charge

of the court, as to the law in this case, and with the further instructions, by consent of the counsel, that they should bring in a sealed verdict, and be present in court with the same on to-morrow, at the opening of the court.

And afterwards, to wit, on the 21st day of the same month and year aforesaid, this order was made, which reads in these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

The jury in this cause being called, and it appearing that some of the jurors were not present, and the respective parties, through their counsel T. F. Durant, and W. C. Micon, esqrs., consenting, the court ordered the clerk to break the seals of the envelope, in which was contained the verdict agreed upon herein, which was accordingly done, and the said verdict read, which was in the words and figures following, to wit: "We, the jurors, find for the plaintiff the sum of ($3,781 $\frac{58}{100}$,) three thousand seven hundred and eighty-one $\frac{58}{100}$ dollars, with interest.

G. LEGENDRE, *Foreman.*

New Orleans, 20th February, 1849.

And the court ordered said verdict to be recorded, which is now accordingly done.

And afterwards, [on] the same day of the same term of said court, the following order was entered, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

The court being satisfied with the verdict of the jury rendered in this case on the 20th February, A. D. 1849, and recorded, doth now order, adjudge, and decree, that David Griffey, the plaintiff, do recover from Daniel Frederick Conrad, the defendant, the sum of three thousand seven hundred and eighty-one dollars and fifty-eight cents, together with interest on said sum, from the twenty-third day of December, in the year one thousand eight hundred and forty-six, at the rate of six per centum per annum until final payment, and the costs of this suit.

And afterwards, to wit, on [the] 23d day of February, A. D. 1849, the following orders were entered upon the minutes of said court, which read in *the* these words and figures, to wit:

DAVID GRIFFEY
vs. } No. 1556.
F. D. CONRAD.

On motion of Thomas J. Durant, of counsel for plaintiff, and on suggesting that a clerical error had occurred in the recording of the judgment rendered on the verdict in this case, by the substitution of the

date of 23d December, 1846, for the 5th January, 1847, as the date at which interest is to commence on the amount of said judgment.

It is therefore ordered by the court, that the judgment entered at the December term in this case, that is to say, on the 21st day of February, 1849, be amended in accordance with the above suggestion, and that the plaintiff recover interest on the amount of said judgment, from the defendant, at the rate of five per centum per annum, from the fifth day of January, A. D. 1847.

SAME
vs.
SAME.

The bills of exceptions taken during the progress of the trial by the plaintiff and defendant, not having been marked filed by the clerk on the day of said trial, it is now ordered by consent of counsel, Durant, esq., for pl'ff, and Micon, esq., for def't, that said bills of exceptions be now filed nunc pro tunc, as if they had been filed during the progress of the trial.

Bills of exceptions.—No. One.

In the circuit court of the United States, for the fifth circuit and district of Louisiana.

DAVID GRIFFEY
vs. } No. 1556.
FREDERICK D. CONRAD.

Present, the honorable Theodore H. McCaleb, judge of the district court, presiding alone. December term, 1848.

Be it remembered, that on the trial of the case before the court and jury, at the December term aforesaid, on Tuesday, the 20th day of February, 1849, the counsel of plaintiff moved the court, that all that portion of defendant's answer which set up a claim against def't of ten thousand dollars damages in reconvention should be stricken out, on the ground that such a plea was not authorized by the laws and regulations governing the practice of circuit courts of the United States; but the court overruled said motion, and refused to strike out the plea in reconvention, upon the ground that the provisions of the code of practice of Louisiana on the subject of pleas in reconvention have been adopted by the circuit court of the United States for this district.

Whereupon plaintiff's counsel excepts and tenders this as a bill of exceptions, to be signed and made part of the record.

THEO. H. McCALEB, [L. S.]
U. S. Judge.

No. Two.

DAVID GRIFFEY
vs.
FREDERICK D. CONRAD.

In the circuit court for the United States, for the fifth circuit, and district of Louisiana.

Present, the honorable Theodore H. McCaleb, judge of the district court, presiding alone.

December term, 1848.

Be it remembered, that on the trial of this cause before the court and jury on this Tuesday, the 20th day of February, 1849, at the said December term, the counsel of defendant offered to read in evidence to the jury portions of depositions of certain witness, for the purpose of showing that Leonard M. Nutz, a witness of the plaintiff, whose testimony had been taken under commission from this court, had made statements different from those contained in his deposition under said commission:

Whereupon the counsel of the plaintiff objected to the reading of such evidence, on the ground that the defendant had not asked said Leonard M. Nutz in cross examination any thing on the subject of the statement, which he, defendant, now attempted to introduce for the purpose of contradicting him; but, on the contrary, had altogether declined to cross examine him; but the court overruled said objection, and allowed said portions of the deposition to be read, upon the ground:

1st. That the question was put to the witness without objection or reservations of the right to object on the part of the counsel for the plaintiff. The court being of opinion, that if objection had been taken to the interrogatory before the commission was forwarded, the defendant would have been put upon his guard, and would then have time to take out a commission to cross examine the engineer Nutz in reference to his declarations made by him to the witness concerning the cause of the accident. The interrogatory not having been objected to, the defendant had a right to presume that the answer would not be objected to; and the objection now urged, if sustained, would result in surprise to defendant.

2d. Another ground upon which the objection is overruled is, that the engineer Nutz was appointed to run the engine by the plaintiff, and was, so far as relates to that particular duty, the agent of the plaintiff. His declarations, therefore, in reference to the accident, or any thing that occurred within the scope of that particular agency, would be binding upon the plaintiff.

3d. And it is further the opinion of the court, that the fact that the counsel for defendant refused to cross examine Nutz in reference to the accident, is no ground for excluding the evidence, as the interrogatory in chief being general, the defendant had no right or ground to presume that the statement of the witness would vary from that given by the witnesses of defendant.

Whereupon the counsel excepts to the ruling of the court, and tenders this as his bill of exceptions, to be signed and made a part of the record.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Bill of exceptions No. Three.

DAVID GRIFFEY
vs.
FREDERICK D. CONRAD.

In the circuit court of the United States, for the fifth circuit, and district of Louisiana.

Present, the honorable Theodore H. McCaleb, judge of the district court, presiding alone.

December term, 1848.

Be it remembered, that on the trial of this case before the court and jury, at the term of the court aforesaid, on this Tuesday, the twentieth day of February, 1849, the counsel of the defendant offered to read in evidence the depositions of witness, to sustain the demand in *reconvention* for damages.

Whereupon the counsel of plaintiff objected to said evidence, on the ground that there was in the answer and plea in reconvention of defendant, no allegation that the plaintiff had been put in default, which by the law of Louisiana is a prerequisite to the recovery of damages.

But the court overruled said objection, and suffered the evidence to go in, upon the ground that the provisions of the code of practice of Louisiana on the subject of pleas in reconvention have been adopted by the circuit court of the United States for this district.

And so the counsel of plaintiff excepts to the ruling of the court, and tenders this as his bill of exceptions, praying that the same may be signed and made part of the record.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Bill of exceptions No. 4.

D. GRIFFEY
vs.
F. D. CONRAD.

U. S. circuit court for Louisiana.

Be it known, that on the trial of this cause before the jury, the plaintiff having offered the deposition of Leonard M. Nutz in evidence, and the defendant having offered the depositions of Sosthene Allain, W. Hunstock, and William Neff, all on file, the said plaintiff offered as rebutting evidence, and to support the credit of L. M. Nutz:

1st. A letter of L. M. Nutz, of date New Albany, the 3d April, 1846, with an affidavit annexed; and 2d, the testimony of one Edwards, a witness, sworn in open court, to the effect that in the spring of 1847 the said Nutz had said, in the presence of said Edwards, that the breaking of the housings or frame of the sugar mill put up by plaintiff for defendant, had been occasioned by a piece of iron getting between the rollers; to both of which, to wit, the said letter and affidavit, and the

said statement in presence of said Edwards, the consul for defendant objected, that, at the time of the making of said affidavit and said verbal statements, the said Nutz was not an agent of defendant, or employed by him; that said affidavit was not made under commission, nor with any notice or opportunity on the part of defendant to cross examine the said witness; that his said verbal statement was not made in the presence of defendant; and, lastly, that the evidence of the defendant above referred to was not an attack upon the credit of said Nutz, but was competent testimony, admissible to prove the facts attested, and did not justify the admission of statements, either verbal or written, at other times and places made by said Nutz in order to support his credit; but all said objections were overruled, and the said letter and affidavit were received, and the testimony of said Edwards, as above stated, was also received and laid before the jury; to all of which the counsel for the defendant tender this their bill of exceptions, and prays that the answers to the interrogatories of L. M. Nutz, W. Hunstock, William Neff, and Sosthene Allain, be deemed and taken as a part of this bill of exceptions, and be copied and certified accordingly.

THEO. H. McCALEB, *U. S. judge*.

Deposition of L. M. Nutts, annexed to bill of exceptions.

Circuit court of the United States, for the fifth judicial circuit, holding sessions in and for the district of Louisiana, to any officer authorized to administer oaths by the laws of the State of Ohio, residing in the city of Cincinnati, in said State.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Daniel Edwards, Isaac Edwards, and Leonard M. Nutts, and them duly examine on oath, and the annexed interrogatories, touching and concerning certain matters and things in a case now depending, wherein David Griffey is plaintiff, and F. D. Conrad is defendant; and the same examination, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this 26th day of February, anno domini 1847, and the 71st year of the independence of the United States of America.

ED. RANDOLPH, *Clerk*,
By F. N. HARALSON, *D. C.*

Circuit court of the United States, for the fifth district.

DAVID GRIFFEY
vs.
F. D. CONRAD.

Interrogatories to be propounded to Daniel Edwards, Isaac Edwards, and Leonard M. Nuttz, witnesses on behalf of the plaintiff.

1st. What is your age, place of residence, and occupation?

2d. How long have you been engaged in said occupation?

3d. Are you acquainted with the parties to this suit?

4th. What is the occupation of David Griffey; how long and where has he been engaged in it?

5th. Did you assist in putting up a mill and engine for grinding sugar, on the plantation of F. D. Conrad, in Baton Rouge, Louisiana, in the fall of 1845.

6th. What do you know about said mill and engine in regard to size, strength, quality of the machinery, and the general style and character of the whole workmanship of the mill and engine?

7th. Were you present when said mill and engine were started? If so, please state the day of the month and year, as nearly as you can.

8th. Have you ever seen other mills and engines for grinding sugar started? If so, please state how many.

9th. How did Mr. Conrad's mill and engine compare in its manner of operating with other mills and engines you have seen started?

10th. What do you mean by housings?

11th. Did you notice particularly the housings of Mr. Conrad's mill and engine?

12th. What was the quality of said housings as to strength, and their fitness for the purpose they were to be used for?

13th. Do you know any defects in said housings? If so, please state what they were.

14th. Were you at the mill and engine after it was started; and if so, in what employment and capacity? And were you there, in said capacity, on or about the 30th day of October, 1845?

15th. Did, on or about that day, any accident occur in the running of the engine? And if so, state fully the nature and character of the accident.

16th. How many days had the engine then been running?

17th. How are such engines usually attended whilst running? Does the head engineer watch all the time the engine, or does he have an assistant, and they two attend the engine, watch and watch?

18th. Had you an assistant attending this engine; who was he; who furnished his services?

19th. Did the accident, you speak of, occur during your watch, or the watch of your assistant?

20th. Was any time lost in grinding by this accident; and if so, how much?

21st. Did you do any thing to repair the effect of the accident? If so, state what you did.

22d. Were you present during the whole time the engine was employed in taking off the crop of that year; did any other stoppage of the engine occur; and if so, what was it caused by? State fully the particulars, as if you were specially interrogated on each circumstance.

23d. How long have you been engaged in business as an engineer?

24th. Have you assisted in putting up or running any number of mills and engines for the manufacture of sugar; if so, how many?

25th. Do you know when this steam engine and mill were shipped from Cincinnati; and if so, at what date were they shipped?

26th. How many days does it usually take for a steamboat to go from Cincinnati to the parish of East Baton Rouge, in Louisiana?

27th. What steamboat was this mill and engine shipped upon, and how long did it take said steamboat to reach defendant's plantation in East Baton Rouge?

28th. Did any circumstance occur on the passage to delay the progress of said steamboat; and if so, what was it?

29th. When did this mill and engine reach the plantation of defendant?

30th. Did the defendant make any objection on account of the time of the receipt of the machinery; or did he say any thing on that subject; and if so, what did he say?

31st. Have you ever seen the contract between plaintiff and defendant for putting up this mill and engine; or have you a copy of such contract in your possession, or under your control? And if yea, please annex it to your answer.

32d. Do you know whether, in putting up said engine and mill, any material, appurtenances, work, or labor were furnished defendant, over and above the requirements of said contract?

33d. Look at the bill of items hereunto annexed, and say whether any or all of those items were furnished the defendant by plaintiff. Please specify by a mark those you know were furnished to defendant.

34th. Were said items furnished by request of defendant himself, or did he know they were furnished; were they necessary; did defendant make any objection to their being furnished?

35th. State whether said items are worth the amounts charged for them in the bill annexed.

36th. Please state any further facts in your knowledge beneficial to plaintiff, as fully as though thereunto specially interrogated.

THOMAS J. DURANT,
Attorneys for plaintiff.

No cross interrogatories.

BENJAMIN & MICON, *Attorneys.*

Bill referred to in the above interrogatories.

F. D. Conrad to David Griffey. Dr.

1845.		
May 17.	To engine, as per contract - - -	$6,650 00
"	To casting one set of grate bars 6,070 lbs. at 3½ cents - - - - -	212 45
"	To casting one furnace mouth, fitted - -	35 00
"	To forging screw, wrench hooks, links, plates, nails, &c., complete, 201 lbs., at 18 cents -	36 18

May 17.	To casting nut, 13 lbs., at 5 cents - -	0 65
"	To cutting and turning screws, and cutting nut -	6 00
"	To 2 triple tackle blocks - - - -	46 40
"	To casting 40 sash weights, 360 lbs., at 3¾ cents -	13 50
"	To casting 4 backs and 8 jams, 138 lbs., at 4¼ cts.	58 90
"	To rope, 300 feet, 1¼ in. diameter, 150 lbs., at 13 cents - - - - -	19 50
"	To pattern for backs and jams - - -	3 00
		$7,081 58

1845, August 31.

Depositions of witnesses produced and sworn on the first day of April, 1847, at the office of Mark P. Taylor, in Cincinnati, by virtue of a commission issued from the 5th judicial circuit court of the United States, for the district of Louisiana, directed to any officer authorized to administer oaths, residing in Cincinnati, for the examination of witnesses, in a certain cause pending in said court, wherein David Griffey is plaintiff, and F. D. Conrad is defendant.

S. M. Nutz, of Hamilton county, being first duly sworn, says:

Answer to first interrogatory, says: I am thirty-seven years of age; my residence, Louisville; occupation, engineer and superintendent of engine building.

In answer to second interrogatory, says: I have been engaged in said occupation twenty years.

In answer to third interrogatory. I am acquainted with the parties to this suit.

In answer to fourth interrogatory, says: David Griffey is a steam engine and sugar mill builder; he has been engaged in that business to my knowledge fourteen years, and how much longer I do not know; he was first engaged in the business in Cincinnati.

In answer to 5th interrogatory, says: I did assist in putting up a mill and engine for grinding sugar cane, on the plantation of F. D. Conrad, about 9 miles below Baton Rouge, Louisiana, in the fall of 1845.

In answer to 6th interrogatory, says: I know about said mill and engine; its size and description is as follows: the cylinder of the engine is 13 inches in diameter, 4 feet and ½ stroke; 3 boilers, 32 inches in diameter, and 30 feet in length; three rollers, each five feet long, 28 inches in diameter and three inches thick; the crown wheels *was* placed next to the fly wheels; the shafts of the rollers were of wrought iron and firmly fitted and fastened in the rollers; the shaft in the top roller was 9 inches in diameter and the other 2; the two lower ones *was* 8 inches. The driving wheel was eleven feet in diameter, and the pitch circle was 8 inches face, and the cast iron fly wheel about 16 feet in diameter, all of cast iron. The cane carrier of the usual length, between 60 and 70 feet; also an additional cane carrier, which lay horizontal running out of the mill; the aforesaid cane carriers *was* 3½ feet wide, and all the necessary fixtures to make said cane carriers complete, except one small

chain that was misplaced or lost, which I replaced by making another, during which time the mill was operation and did not stop. There was 225 feet of strong copper pipe furnished and attached to the engine from the pond, and waste pipe which conducted the water outside the mill. In addition, there was one spare pinion furnished; there was one spare segment furnished, and two spare crown wheels, one for the top and the other for the bottom rollers. The quality and strength of the engine was well proportioned and strong. The quality of the machinery was good. The general style and character of the whole workmanship, mill and engine, was good.

In answer to 7th interrogatory says. I was present when said mill and engine was started; it was started October 12th, 1845.

In answer to 8th interrogatory says. I have seen about half a dozen or more started.

In answer to 9th interrogatory says. It compared with others very well.

In answer to 10th interrogatory says. The frame which holds or supports the rollers.

In answer to 11th interrogatory says. I did notice particularly the housings of Mr. Conrad's mill and engine.

In answer to 12th interrogatory says. They were sufficiently strong; they were well fitted and suited for the purpose they were intended to be used for.

In answer to 13th interrogatory says. I do not know of any defects.

In answer to 14th interrogatory says. I was at the mill and engine, after it was started, in the capacity and employment of engineer. I was there on the 30th day of October, 1845, acting in that capacity.

In answer to 15th interrogatory says. On the 30th October we put in a spring beam, underneath the housing, and took out the ones that were there, on account of their being made of green timber and had sprung; there was nothing broke at that time; some time in November one of the housings broke, which was caused by the carelessness of one of the negroes letting a piece of iron pass in the rollers, in the carrier, which was sufficient to break any engine; I was asleep along side of the engine, and was awakened by the surge, and took out the piece of iron; the housing did not part, it only cracked, and the mill was not stopped at all on account thereof; but when the tie-bolt was put in we stopped about 2½ hours.

In answer to 16th interrogatory says. It was about sixteen days.

In answer to 17th interrogatory says. The head engineer, had an assistant furnished by the planter; the head engineer watches 18 hours, the assistant six hours, and they two attend to the engine.

In answer to 18th interrogatory says. I had an assistant, which was one of Mr. Conrad's slaves, named Tilman, furnished by Mr. Conrad.

In answer to 19th interrogatory says. The accident occurred during the watch of my assistant.

In answer to 20th interrogatory says. There was no time lost, except the two hours and a half which I was putting in the tie-bolt.

In answer to 21st interrogatory says. I made two new brace bolts for the housings, and continued the crop without any further detention.

In answer to 22d interrogatory says. I was present during the whole time the engine was employed taking off the crop that year, and no other stoppage of the engine and mill occurred.

In answer to 23d interrogatory says. About 20 years.

In answer to 24th interrogatory says. I assisted in putting up one sugar mill before, and running off a crop with another; and have superintended and put [up] a number of engines, at least 30.

In answer to 25th interrogatory says. The engine and mill were shipped on a flat boat on the 9th of August, 1845; the river was very low; that the work could not have been shipped on a steamboat.

In answer to 26th interrogatory says. I cannot answer.

In answer to 27th interrogatory says. It was shipped from Cincinnati in a flat boat, as it could not be taken by a steamboat, at that time, to the mouth of the Ohio river, and from thence taken to the plantation by the steamers White Cloud and Uncle Sam; the copper pipes went down on the same boat that I did, the steamboat North America. I do not know how long it took to reach the plantation, but I do know that it was difficult to ship from the mouth at that time.

In answer to 28th interrogatory says. I was not aboard, and therefore cannot answer.

In answer to 29th interrogatory says. The mill and engine reached the plantation of the defendant the middle part of September, 1845.

In answer to 30th interrogatory says. He did not make any objection as to the time the engine arrived, as I heard, nor his overseer, nor agent.

In answer to 31st interrogatory says. I have seen the contract for putting up said mill and engine, and hereto annex the same marked A.

In answer to 32d interrogatory says. There was material, appurtenances, and labor furnished defendant, over and above said contract.

In answer to 33d interrogatory says. I have looked at the annexed bill of items, and state that there was, over and above the contract furnished, grate bars for kettles 6071 lbs., at 3½ cts., amounting $212 45; casting one furnace mouth fitted, $35; forging timber wheel screw and hooks, links, plates, nails, &c., complete, 201 lbs., at 18 cts., making $36 18; to casting nut and screw, 13 lbs., at 5 cts. per lb., 65 cts.; cutting and turning screw and nut, $6; two tripple tackle blocks, $46 40; casting 40 sash weights, 360 lbs., at 3¾ cts. per lb., $13 50; casting four backs and eight jams, 1381bs., at 4¼ cts., $58 90; rope 300 feet, 1¼ inches diameter, $19 50; pattern for backs and jams, $3. I have marked by a cross on the bill of items as above specified, the prices as above stated are the usual prices; some of them are lower than the prices, and none higher.

In answer to 34th interrogatory says. The said items were furnished at the request of said defendant, so he told me; they were necessary.

In answer to 35th interrogatory says. Yes. They were fully worth the prices charged.

In answer to 36th interrogatory says. The work was done in a workmanlike and substantial manner. A better piece of work could not have been made; it was an extra job of work. Said mill and engine performed as well as any engine and mill could perform.

The engine and mill was ready for work six days before the kettles and cane were ready for the work.

LEONARD N. NUTZ.

THE STATE OF OHIO, *Hamilton county, ss:*

I, Mark P. Taylor, a justice of the peace in and for the county aforesaid, residing in the city of Cincinnati, duly authorized to administer oaths, do certify, that, in obedience to the annexed dedimus potestatum, issued out of the 5th judicial circuit court of the United States, for the district of Louisiana, in the case of David Griffey vs. F. D. Conrad, I caused Leonard N. Nutz, Daniel Edwards, and Isaac Edwards to appear before me, at my office in Cincinnati, on the 1st day of April, 1847, who, after being duly sworn, made their several answers to the interrogatories put, and herewith attached; and that their answers were reduced to writing by George M. Cummins, a clerk in my employ, in my presence, who is not of kin or counsel to either of the parties.

MARK P. TAYLOR,
Justice of the peace.

STATE OF OHIO, *Hamilton county, ss:*

I, Edward C. Roll, clerk of the court of common pleas, within and for said county of Hamilton, do hereby certify, that Mark P. Taylor, esquire, before whom the foregoing or annexed depositions of L. N. Nutz, Daniel Edwards, and Isaac Edwards appear to have been taken, was, at the time of taking and subscribing the same, an acting justice of the peace in and for the county of Hamilton, duly commissioned and qualified, and that full faith and credit are due to all his official acts as such.

In testimony whereof I, the clerk aforesaid, have hereunto set my hand and affixed the seal of the said court, at Cincinnati, in the said county, this third day of April, A. D. 1847.

[L. S.]

E. C. ROLE, *Clerk H. C. C. P.*
By J. M. McMASTER, *Deputy.*

STATE OF OHIO, *Hamilton county, ss:*

I, William B. Caldwell, president, judge of the ninth judicial circuit of the court of common pleas within and for the State of Ohio, the same being a court of law and record in and for the county of Hamilton, do hereby certify, that Edward C. Role is clerk of said court, and was such clerk at the time of making and subscribing the foregoing certificate, and James M. McMasters is his deputy thereof, and that his attestation aforesaid is in due form of law, and that, to all acts by him so done, full faith and credit are and ought to be given in judicature thereout.

In testimony whereof I do hereto subscribe my name, at Cincinnati, this third day of April, A. D. 1847.

WILLIAM B. CALDWELL,
President judge.

Deposition, W. Hunstock, annexed to bill of exceptions.

Circuit court of the United States, for the fifth judicial circuit, holding sessions in and for the district of Louisiana, to James Cooper, justice of the peace, residing in the parish of East Baton Rouge, or any other judge or justice of the peace residing in said parish.

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you William Hunstock, and him duly examine on oath, touching and concerning certain matters and things, in a case now depending in the said court, wherein David Griffey is plaintiff, and F. D. Conrad is defendant, and the same examination, so taken and reduced to writing, you certify, under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this [SEAL.] seventeenth day of May, anno domini 1847, and the 71st year of the independence of the United States of America.

ED. RANDOLPH, *Clerk*.
By F. N. HARALSON, *D. C.*

United States circuit court.

DAVID GRIFFEY
vs.
F. D. CONRAD.

Interrogatories to be propounded to William Hunstock, a witness material for plaintiff, and residing in the parish of East Baton Rouge.

Commission to be addressed to James Cooper, J. P., or any justice of the peace in said parish.

1st. What is your age; where do you reside at present; what is your occupation now, and what was it in the year 1845, and before?

2d. Did you see the plaintiff in the summer of 1846, and where did you see him, and state the time as near as you can.

3d. Did the plaintiff examine the sugar mill and engine of defendant at that time, and what did he say touching the accidents to the machinery, and their probable cause?

4th. Did the plaintiff say anything of Mr. Nutts, the engineer, and state particularly all he said about him; was, or was not, Nutts at the time of the conversation still in plaintiff's employment?

5th. Was anything said by plaintiff respecting the time when the mill of the defendant should have arrived, or respecting any agreement on that subject; what did he say about it?

6th. Did the plaintiff say anything about the time of pulling down the old engine, and what did he say about it?

7th. Was any, and what reason, stated by plaintiff for the delay in the arrival of the engine?

8. Was anything, and what, said about the housings being broken by iron or some other foreign substance passing through the mill, and by whom said?

9th. To what cause did the plaintiff attribute the breaking of the housings, and the other difficulties that occurred to the mill?

10th. Did you see Nutts soon after, and how soon after, the breaking of the housings; did he express any opinion as to the cause, and what did he say on the subject?

11th. If a piece of iron or wood, large enough to break the housings had passed through the mill, what would have been the probable consequence; would it, or not, have been known to the persons employed about the sugar house; have you ever known such an accident to happen, and what took place?

12th. Is the housings of defendant's mill stronger or weaker than that first put up in 1845; what is your opinion as to the cause of the breaking of the housings?

13th. How did the mill work in the season of 1846; if there was any difference between that season and the preceding one, to what cause do you attribute it?

14th. How was the fly wheel put up by Mr. Edwards?

15th. Who put up the mill after the season of 1845; and what was the character and capacity of the person employed for that purpose?

16th. State particularly who was present during the conversations to which you have alluded, and where and when they occurred.

17th. State all else within your knowledge of benefit to defendant.

18th. Did you know Collins and Rives; were they employed by defendant; when, and what was their character and capacity; what became of them?

19th. Do you know a negro man named Tilman belonging to defendant, and what capacity has he as a mechanic, &c.?

20th. What prospect had defendant for a crop in 1845; how much sugar did he make, and how much could have been made from his cane if the engine had worked well and without interruption?

21st. State all you know about the working of the mill in 1845, or its condition when taken down.

22d. What was the capacity of defendant's kettles; how many hogsheads can they make in a day?

23d. Are the housings a material part of the mill; do they require to be made very strong?

BENJAMIN & MICON, *of counsel.*

William Hunstock.

STATE OF LOUISIANA,
Parish of East Baton Rouge.

DAVID GRIFFEY
vs.
F. D. CONRAD.

In the circuit court of the United States, for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

Be it known, that on this thirteenth day of October, in the year of our Lord eighteen hundred and forty-seven, by virtue of a commission from the aforesaid circuit court of the United States, which commission is hereunto annexed, I did cause to appear before me, the undersigned justice of the peace in and for the parish of East Baton Rouge aforesaid, and residing therein, William Hunstock, also residing in said parish, and stated to him that attached to said commission there had come certain interrogatories of defendant, and cross interrogatories of plaintiff, to be propounded to him as a witness in the above entitled suit; and then having sworn the said William Hunstock according to law, I proceeded to examine him by propounding to him the said interrogatories and cross interrogatories, to which he answers as follows:

To the interrogatories of defendant he answers:

To 1st interrogatory the witness answers: That he is forty-nine years old; resides in the parish of East Baton Rouge; is now overseeing and managing on the plantation of defendant, and was in the year 1845, and before for many years, a planter in the said parish, but having sold his plantation he is now in the employment of the defendant as above stated.

To 2d interrogatory the witness answers: That he saw the plaintiff in the month of June, 1846, at plantation of defendant in said parish; he was then at defendant's sugar house examining his sugar engine and mill.

To 3d interrogatory the witness answers: That the plaintiff did examine the sugar mill and engine of defendant at that time, and then he, the plaintiff, said that Mr. Nutz, the engineer, whom he, the plaintiff, had sent to run the engine of defendant, had told him that the breaking of the housings of the mill was owing to the chawing of the keys that keyed up the brace bolts; but he, the plaintiff, had afterwards found out that said Nutz was an incompetent and lazy engineer, and that he was inclined to believe that it was owing to Nutz's neglect, the accident happened; and that he, the plaintiff, was so dissatisfied with Nutz, that soon after his return to Cincinnati, he had dismissed him from his shop.

To 4th interrogatory witness answers: That he recollects nothing that plaintiff said of Mr. Nutz more than what he has stated in his answer to the third interrogatory; and that he does not know whether Nutts was in the employment of plaintiff at the time or not, but he supposes

that he was not, as the plaintiff stated himself that he had dismissed him as witness has mentioned in his answer to 3d interrogatory.

To 5th interrogatory the witness answers: The plaintiff stated that the reason that the mill and engine had arrived at Mr. Conrad's plantation so much later than was understood and agreed upon between the parties was, that the plaintiff's agent had disobeyed his, plaintiff's, instructions about shipping them from the mouth of the Ohio river; the plaintiff stated that the flat boat upon which he had shipped the engine and mill had run aground at the mouth of the Ohio river, and that then he had instructed his agent to ship them by the first steamboat that came along down the Mississippi river; but that his, the plaintiff's, agent had refused to do so, because the steamboats demanded freight for taking them at a little higher rate than had been usual, and that that was the cause of all the delay which occurred.

To 6th interrogatory the witness answers: That he heard the defendant remark to Mr. Griffey, the plaintiff, that the reason that it has been understood between the parties that the engine and mill should be delivered in the month of July, was because the defendant would be uneasy if they arrived later, and if they did arrive later than July, he would dislike to pull down his old mill and engine, as there might be some risk in that case of getting the new one up in time; Mr. Griffey assented to these remarks of the defendant; witness recollects of no other allusions to pulling down the old engine.

To 7th interrogatory witness answers: That he has no recollection of any reasons stated by plaintiff for the delay in the arrival of the engine other than what he has stated in his answer to the fifth interrogatory.

To 8th interrogatory witness answers: That he never heard any thing said by any body about iron or other foreign substance having passed through the mill by which the housing was broken.

To 9th interrogatory witness answers: That the plaintiff was of the opinion, as expressed by him, that the breaking of the housings and other difficulties that occurred was owing to the neglect of Mr. Nutz, the engineer; the plaintiff said that that was his opinion.

To 10th interrogatory witness answers: That he saw Nutz soon after the accident occurred at his, witness', sugar house, but cannot say precisely how longer after, but it was not longer than one week after the breaking of the housing; that Nutz came to the sugar house of witness, by consent of defendant, to assist in taking down some part of his, witness', machinery, which occupied him about one or two hours; during which time he had a conversation with Nutz about the accident which had happened to the housing of defendant's mill; that he asked Nutz to what cause the breaking of said housing was owing; and Nutz answered that he could not tell the cause of its breaking, as there was moderate feed on the cane-carrier at the time the accident happened, and no strain on the mill.

To 11th interrogatory witness answers: That if a piece of *of* iron or wood large enough to break the housings had passed through the mill,

it would have caused a great concussion of the building, and a very loud noise; that every one who was awake about the sugar house at the time must have heard it, and those who were asleep must have been awakened up by the noise and shock; witness states that on several occasions wooden substances have passed through, or commenced passing through his mill, and it always caused a great concussion, and a loud noise.

That in taking off the crop of defendant of 1846, witness being overseer for defendant, and on the last watch at the sugar house, witness was asleep in his bed, which was situated in that part of the building which was fartherest from the mill, and was suddenly waked up by a great noise, and when he awoke he felt the building shaking; that he immediately inquired the cause, and the white engineer showing him a small pitchfork, informed him the points had just commenced entering the mill, and that he stopped the engine before it could get in any distance, which was the cause of the noise and shock that woke him up; that this accident caused no injury to the mill or machinery.

To 12th interrogatory witness answers: That the present housings of defendant's sugar mill, which were put up in the year 1846, are much stronger in every respect than those which were put up in 1845, one of which broke, and is the one inquired of in the foregoing interrogatories. Witness also answers, that, in his opinion, the first housings put up with defendant's sugar mill, in 1845, were entirely too light, and not strong enough, and that the key holes in the brace bolts were entirely too small; which deficiency has been remedied in the new housings, and the new housings are also much heavier than the old ones were; that, in the opinion of witness, the reason of the breaking of the housing was owing to its lightness and want of sufficient strength, and partly to the smallness of the key holes in the brace bolts. Witness also thinks that the mill was badly put up.

To 13th interrogatory witness answers: That the mill worked very well in 1846, because it [was] well put up, with the exception that it does not press the cane as well as it should do, which he believes must be owing to the weakness of the tempering screws, which causes the cylinders to open frequently. He is not sufficiently acquainted with how the mill worked in 1845, to answer the latter branch of this interrogatory.

To 14th interrogatory witness answers: That the fly-wheel was very badly put up by Mr. Edwards, it being put by him greatly out of plumb.

To 15th interrogatory witness answers: That the mill was taken down some time in the month of August or September, 1846, and put [up] again with the new housings by Mr. Reese. Witness believes his name was Robert Reese. When witness says that the mill was taken down and put up again, he does not mean to say that the walls or foundation was disturbed—the same walls and foundation were used. Witness considers Mr. Reese a first rate engineer, and has the most favorable opinion of his character and capacity.

To 16th interrogatory witness answers: That, at the conversation

with the plaintiff; no one was present but the plaintiff, defendant, and witness, and it occurred principally at defendant's sugar house; after which they proceeded to the river to examine the new housing, and part of it occurred there. Witness does not recollect who was present at the conversation with Nultz, nor whether there was any body present; the conversation between witness and Nultz took place at the sugar house of witness.

To 17th interrogatory witness answers: That he has no facts to communicate in answer to this interrogatory.

To 18th interrogatory witness answers: That he knew John Collins, [and] Zenon Rivas; they were employed by defendant; Collins was his overseer in 1845, and until his death, which took place in May, 1846; and Rivas was employed as second overseer, in taking off the crop of 1845, but took sick and left before the crop was taken off. Witness was not much acquainted with Collins, but had always heard a high character of him, both as a man and an overseer; and, judging from what he saw of his management of Mr. Conrad's plantation, he thinks he deserved that character; that he knew Rivas well, and considered him a man in whom every confidence might be placed; he was a man of excellent character. Mr. Collins died in May, 1846, and witness took his place as overseer for the defendant on his plantation, in which capacity he has remained ever since. Zenon Rivas died, witness thinks, in January, 1846.

To 19th interrogatory witness answers: That he has long known a negro man named Tilman, belonging to defendant; that he is a very intelligent negro, a carpenter by trade, and of an exceedingly mechanical turn; that he *he* is a very steady and confidential negro, and a good engineer for running and taking care of an engine, and to whose care an engine may be safely entrusted; he has assisted in running his master's engine for at least 12 or 13 years; he is very attentive, careful, and prudent in running an engine.

To 20th interrogatory witness answers: That the crop of defendant, in 1845, was a beautiful crop, and one of the best he ever saw on the place; all his cane was fine, and his crop was such a one as witness thinks would have yielded him about five hundred hogsheads and upwards; that, as far as witness recollects, the defendant's crop of 1845 yielded him a little upwards of four hundred hogsheads; that if no accident had happened to the engine, and it had worked well without any interruption, defendant would have made at least five hundred hogsheads that year.

To 21st interrogatory witness answers: That he knows nothing about the working of the mill, in 1845, until after the housing broke; that he saw it after [the] housing broke, and it then worked very badly. The cane was pressed by only one end of the rollers, which caused a great loss of juice, as the mill not being able to press it sufficiently, much of the juice went off in the begasse. Witness saw the mill taken down by Mr. Reese; it was very much out of plumb and out of square, and the housing so much fractured that it was surprising that it worked an in-

stant in the insufficient manner it did. The broken housing could only have been kept together by the screws and bolts.

To 22d interrogatory witness answers: That the defendant's kettles were the same then as now, never having been reset. The large set make from ten to twelve hogsheads in twenty-four hours, and the small set from eight to ten, according to the quality of the juice.

To 23d interrogatory witness answers: That the housings are a material part of a sugar mill; they are the foundation upon which the mill works, and require indispensably to be very strong and steady.

Cross interrogatories.

DAVID GRIFFEY
vs.
F. D. CONRAD.

In the circuit court of the United States, for the fifth circuit and district of Louisiana.

Cross interrogatories to be propounded on the part of defendant to William Hunstock, a witness on behalf of plaintiff.

1st. Are you in the employment of F. D. Conrad, the defendant; how long have you been in his employment; and in what capacity were you in his employment in the fall of 1845?

2d. How do you know that plaintiff examined the sugar mill of defendant, in the summer of 1846; were you present when he did so; was any one else present; and if so, who?

3d. Did plaintiff address himself to you when he spoke of the probable cause of the accident to defendant's sugar mill; if not, to whom was he speaking; was Mr. Nutts present at the conversation?

4. Did not plaintiff say that the mill put up for defendant was a perfectly good one, and fully equal to the kind of mill called for in his contract with Conrad, or did he not make use of expressions equivalent to such a declaration?

5. Did not plaintiff say that the mill had been shipped [at] the foundry in Cincinnati in full time to [have] reached Conrad's plantation at the day contracted for, but that a sudden and unexpected fall of the water in the Ohio prevented it?

6. Were you present at the time the housings of defendant's mill broke; how soon after the accident were you present? State precisely. Did you have any conversation with Nutts then; who else was present at the conversation; did not Nutts tell you that the accident occurred while the negro man of Mr. Conrad was running the engine; and that the accident occurred by a piece of iron getting into the cane shute?

THOMAS J. DURANT,
Attorney of Griffey.

Answers to cross interrogatories.

In answer to cross interrogatories of the plaintiff the witness, William Hunstock, answers:

To 1st cross interrogatory witness answers: That he is in the employment of F. D Conrad, the defendant, and has been interruptedly since about the 18th of May, 1846, in the capacity of overseer on his plantation. That witness was not in the employment of defendant in the fall of 1845.

To 2d cross interrogatory witness answers: That he knows that plaintiff examined the sugar mill of defendant in the summer of 1846, because he saw him examine it. Witness was present when he did so. That there was no person when he examined it except the plaintiff, the defendant, and witness.

To 3d cross interrogatory witness answers: That when plaintiff was speaking of the probable cause of the accident to defendant's sugar mill, that he supposes his conversation was intended for defendant as he was the party interested, although witness was present at the conversation as well as defendant. That Mr. Nutts was not present at the conversation.

To 4th cross interrogatory witness answers: That he has no recollection of the plaintiff saying that the mill was a perfectly good one, nor did he hear him say that it was fully equal to the kind of mill called for in his contract with Mr. Conrad. Witness heard him make use of no such remarks, nor did he make [use] of any expressions equivalent to such a declaration. That all witness heard him say on that point was, that he was of opinion that the breaking of the housing was caused by the neglect of Mr. Nutts.

To 5th cross interrogatory witness answers: That he has no recollection of having heard the plaintiff say any thing about the time of shipping the mill from the foundry at Cincinnati, nor did he hear him say any thing about a sudden and unexpected fall of the water in the Ohio river. That he heard plaintiff make none of the remarks inquired of in this interrogatory.

To 6th cross interrogatory witness answers: That he was not present at the time the housings of defendant's mill broke; he thinks it must have been a week or more after it broke when he first saw it, but does not recollect the time precisely; he does not recollect of having had any conversation with Mr. Nutts at the mill about the matter but that he had a previous conversation with Nutz at his (witness') own sugar house, which conversation is detailed in his answers to the defendant's interrogatories; that Mr. Nutz did not tell witness that the accident occurred to the housing while the negro man of Mr. Conrad was running the engine. Witness has no recollection that he mentioned the nego's name in the matter. That Mr. Nutz did not say that the accident occurred by a piece of iron getting into the cane shute; that he, Nutz, said that he did not know what the accident was owing to.

WM. HUNSTOCK.

Sworn to and subscribed before me, this 13th day of October, A. D. 1847. JAMES COOPER, *J. P.*

2650.

STATE OF LOUISIANA,
Parish of East Baton Rouge.

I, James Cooper, a justice of the peace in and for the parish of East Baton Rouge, and State of Louisiana, hereby certify, that on this 13th day of October, 1847, I caused William Hunstock, the witness, to appear before me at my office, in the aforesaid parish; and said witness having been by me solemnly sworn, and carefully examined in the annexed interrogatories and cross interrogatories, I reduced his answers to writing in his presence, and said answers having been by me read to and understood by the said witness, he subscribed the same in my presence as his deposition in the cause styled in the caption of the said deposition. And I further certify, that the questions propounded to said witness were the annexed interrogatories and cross interrogatories, and that his answers thereto constitute the foregoing deposition.

That said deposition has been altered or changed in nothing since the same was subscribed by the witness, nor has said deposition left my possession up to the time of ensealing and delivering the same. And I further certify, that I am not of counsel for either party in the cause in which the foregoing deposition is to be used, nor am I in any way interested in the result thereof.

All of which I hereby certify under my hand and private seal, at the parish of East Baton Rouge aforesaid, this 13th day of October, A. D. 1847. JAMES COOPER, [SEAL.] *J. P.*

Deposition of Wm. Neff, annexed to bill of exceptions.

Circuit court of the United States, for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

To James Cooper, justice of the peace, residing in the parish of East Baton Rouge:

Know ye, that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you William Neff, and duly examine on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein David Griffey, plaintiff, and F. D. Conrad is defendant; and the same examination, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this [L. S.] second day of April, anno domini 1847, and the 71st year of the independence of the United States of America.

ED. RANDOLPH, *Clerk*,
By F. N. HARALSON, *D. C.*

Interrogatories.

DAVID GRIFFEY vs. F. D. CONRAD. } U. S. C. C.

Interrogatories to be propounded to William Neff, a witness material *material* for the defendant, residing in the parish of East Baton Rouge.

Commission to be addressed to James Cooper, justice of the peace, or any other justice of the peace in said parish.

Interrogatory 1st. What is your age and occupation; have you been employed by defendant; and when, how often, and in what capacity?

Interrogatory 2d. Were you so employed in the fall of 1845; if yea, what was the nature of your duties; what opportunities had you of knowing how defendant's sugar mill performed?

Interrogatory 3d. How many overseers and assistants were there employed by defendant, and who were they; are any of them dead, and when did they die; who took their places?

Interrogatory 4th. When did the machinery and mill, put up in the year 1845, arrive at the plantation; when did they commence pulling down the old mill and engine?

Interrogatory 5th. Under whose direction were the old engine and sugar mill of defendant pulled down and the new one put up? And state what was the conduct of the parties, and the manner of acting in doing so.

Interrogatory 6th. Was any injury done to the old mill or engine or corn mill? And state what injury, and from what cause it resulted, and if said injury might have been avoided by a different manner of taking them down.

Interrogatory 7th. If you have stated that Mr. Edwards was the person engaged in this operation, then state whether any thing was said to him at the time about his manner of proceeding; who said it; what was said, and what his answer?

Interrogatory 8th. At what time did the defendant return from the North; and what was the condition of the crop and mill when he returned?

Interrogatory 9th. Did defendant's overseer do every thing to expedite the putting up the mill and engine; and did he afford every facility to the engineers and workmen in doing it; did defendant, after his arrival, do his utmost to facilitate the commencement of grinding?

Interrogatory 10th. When did the grinding commence, and in what condition was the machinery at the time; was Mr. Edwards there at the time; if not, when did he go away?

Interrogatory 11th. Did he take any, and which, of his hands with him; and how many, and which, of them did he leave; and by whom was the balance of the work done?

Interrogatory 12th. How did the mill work; were any complaints

made respecting it; by whom and to whom, and what reason was given for its working in that manner; and what was said about it by Nutz, the engineer?

Interrogatory 13th. Did any thing happen to the foundation of the mill and foundation walls; and what and when, and what was the result? State particularly.

Interrogatory 14th. Was any thing, and what, done to remedy the difficulty? State particularly.

Interrogatory 15th. Were the different parts of the foundation of the mill and mill works, commonly called iron timbers or bed, connected; if not, how were they separated; would it have strengthened the machinery if the said iron foundation or timbers had been connected?

Interrogatory 16th. Did the said iron foundation or iron timbers move; if yes, how much and in what direction; what measures were taken to remedy this difficulty?

Interrogatory 17th. Under whose superintendence were the brick work and masonry, and all other work for the engine and mill, done?

Interrogatory 18th. How much delay was caused by repairing or strengthening the mill and mill work and foundation wall; how did the mill work after the repairs?

Interrogatory 19th. Did any other and what accident happen; did either of the housings break; if yea, when did said accident or break happen; when was it discovered, and how was it first perceived; what was the cause of this accident; what was done then? State particularly.

Interrogatory 20th. How soon and how was this difficulty obviated, and how much time was lost in doing it?

Interrogatory 21st. How did the mill afterwards work; how did the cane pass through the rollers; was there any particular plan adopted after the accident to make the cane pass through the rollers; if yes, what was the plan; how did the rollers then press the cane? State every thing particularly.

Interrogatory 22d. Was any thing said by Mr. Nutz, the engineer; what did he say, and when?

Interrogatory 23d. If you answer that either of the housings broke during the grinding, was it replaced during the grinding?

Interrogatory 24th. Was any new housing received after the grinding season was over? If so, describe it, and say whether it was stronger or weaker than the one that broke.

Interrogatory 25th. Was the first housings removed; if so, what was its condition when taken out?

Interrogatory 26th. Are the housings a material part of the mill, and ought they to be strong?

Interrogatory 27th. Has defendant a slave called Tilman; if yes, what is his character for fidelity and intelligence, particularly as a mechanic and engineer; has he been employed to run a sugar mill and engine; when, where, and how often; did you ever hear him charged with neglect as an engineer; if, in your answers to the preceding inter-

rogatories, you have mentioned a negro called Tilman, is he the same alluded to in your answer to this interrogatory?

Interrogatory 28th. How was the fly-wheel of the new engine put up?

Interrogatory 29th. What assistance did the defendant render in the way of hands to the engineers employed by plaintiffs; did Mr. Nutts have negroes to assist him in running the engine? If yes, state how.

Interrogatory 30th. How many rollers of the cane carriers were brought to defendants; was the number sufficient; if any was wanting, what became of them, or why had they not been sent; was there a strap chain wanting for the cane carrier; what did Mr. Edwards say at the time about the iron rollers and strap chains?

Interrogatory 31st. How long a time elapsed from beginning to putting up the new mill and engine until the grinding commenced; and during what part of this time did defendant's mechanics work with the engineers?

Interrogatory 32d. Was there any unusual strain on the mill at the time the housing gave way; if yes, state what it was; did any iron or wood, or any foreign substance, go into the rollers to strain them; if yes, what was it; what did the engineer, Mr. Nutz, say about it at the time?

Interrogatory 33d. If a piece of iron or wood had gone through the rollers, what would have been the probable consequence; would it or not have been known generally to the persons employed about the sugar house; have you ever known such an accident to occur; and if so, when, and what was the consequence?

Interrogatory 34th. Were you on the plantation of the defendant during the grinding season for the crop of the year eighteen hundred and forty-six; if yes, how did the mill then perform; to what cause do you attribute the change, if any took place?

Interrogatory 35th. Did Nuttz, the engineer, say any thing to you about the manner of putting up of the engine; what did he say; and when and where did the conversation occur?

Interrogatory 36th. What was Nutz' conduct as an engineer; was he attentive to his duties?

Interrogatory 37th. Who took down the mill after the grinding season of 1845; what was the condition of the mill and engine, especially brass boxes and journals?

Interrogatory 38th. Who was Mr. Conrad's overseer for the crop of 1845; and what was his character and capacity; did he discharge the duties of an overseer faithfully; did he afford every facility in putting up the engine; was he watchful, attentive, and careful during the grinding season?

Interrogatory 39th. How many hogsheads of sugar do you think defendant's kettles could have taken off per day?

Interrogatory 40th. How many hogsheads of sugar did defendant make from his crop of 1845; what was the condition and quantity of his

cane in the field; how many hogsheads of sugar ought he to have made, with his engine in perfect order, in twenty-four hours?

Interrogatory 41st. Was any and how much of the cane lost in the field; was any and what loss sustained by the insufficient manner in which the cane was pressed by the rollers?

Interrogatory 42d. Did not a severe freeze occur during the grinding season; if yes, when; was the cane injured very much by the freeze; what was the extent of the injury; did the defendant lose a great deal of cane; if yes, would he have sustained that loss if the engine and mill had been ready in time or had worked well; what is your opinion of the loss the defendant has sustained by not being able to take off his crop before the freeze?

Interrogatory 43d. What was the quality of the last cane ground, and its product; and what was done with it?

Interrogatory 44th. Could the defendant have commenced grinding his crop on the tenth of October, had his mill and engine been ready?

Interrogatory 45th. How many hogsheads of sugar did the defendant lose by the imperfection of the sugar mill, the delays in putting it up, and the subsequent accidents to it?

Interrogatory 46th. What was defendant's force employed on his plantation; how many hands did he employ; were his teams good and sufficient in proportion to his force; were his hands and teams sufficient to take off the crop in good season, had the mill been started at the proper time and worked well; how many hogsheads of sugar could defendant have made in twenty-four hours, if the mill had acted well, and the cane were near and roads good?

Interrogatory 47th. Is there any other fact within your knowledge material in this suit? If yes, state the same as fully as if particularly interrogated on the subject.

Interrogatory 48th. By whom was Mr. Edwards employed or sent to put the new engine; by whom was Nutz employed or appointed to run the engine during the grinding season?

BENJAMIN & MICON, *of counsel.*

Answers to the foregoing interrogatories.

STATE OF LOUISIANA, *parish of East Baton Rouge.*

In the circuit court of the United States, for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

DAVID GRIFFEY
vs.
F. D. CONRAD.

Be it known, that on the eighth day of May, in the year of our Lord eighteen hundred and forty-seven, by virtue of a commission from the aforesaid circuit court of the United States, which commission is hereunto annexed, I did cause to appear before me the undersigned justice of the peace, in and for the parish of East Baton Rouge aforesaid, and residing therein, William Neff, also residing in said parish, and stated

to him that attached to said commission there had come certain interrogatories of defendant and cross interrogatories of plaintiff, to be propounded to him as a witness in the above entitled suit; and there having sworn the said Neff according to law, I proceeded to examine him, by propounding to him the said interrogatories and cross interrogatories, to which he answered as follows:

To the interrogatories of defendant he answers:

To 1st interrogatory the witness answers: That he is twenty-eight years old, and by occupation a wheelright. Yes, he has been employed by defendant; that he has lived in this parish upwards of four years, during which time he has worked on several plantations, and sometimes he has worked in the parish of West Baton Rouge at his trade, but that during a greater portion of that time he was employed by defendant periodically.

To 2d interrogatory witness answers: Yes, he was employed as a wheelwright on defendant's plantation, in the [year] 1845; that he came to his plantation about the middle of September of that year, to do some repairs to defendant's carts, preparatory to the rolling season; that before the rolling season came on his duty was to work at repairing the carts, at which he continued to work during a part of the rolling season, say three or four weeks after the rolling season commenced; that from that time until the closing of the rolling season he acted as second overseer, the second overseer having fallen sick and afterwards died; that his duties as second overseer required him to be always about the sugar house, particularly about the cane carrier, sugar mill, and juice vats, and begasse shute; that during the time he was working at the carts he worked close to the sugar house, and was frequently called in when the sugar mill got out of order to assist in getting it started; that his being employed repairing carts close to the sugar house as aforesaid, and afterwards acting as second overseer, and in this capacity being constantly in and about the sugar house, were the opportunities he had of knowing how defendant's sugar mill performed.

To 3d interrogatory witness answers: That until the grinding season the defendant had only one overseer, whose name was John Collins; that when the grinding season commenced he employed an assistant overseer named Zenon Rivas; that about three or four weeks after the rolling season commenced the [said] Zenon Rivas sickened and left, from which sickness he never recovered, and died, he thinks, some time in the month of February thereafter; and when Rivas left witness took his place as assistant overseer; that Collins the first overseer died in the month of May, 1846, and Mr. William Hunstock took his place as first overseer.

To 4th interrogatory witness answers: That the last part of the machinery and mills, put up in the year 1845, arrived at defendant's plantation in the latter part of the month of September, or the first of October; witness does not recollect the precise day; that as soon as all the new machinery had arrived, they commenced pulling down the old mill and engine.

To 5th interrogatory witness answers: That the old mill and engine were pulled down, and the new mill and engine put up under the direction of Daniel Edwards, who was sent by the plaintiff to put up defendants's engine and mill; that witness does not pretend to be a very competent judge of putting up an engine, but knows that they were very careless and reckless in their manner of taking the old one down, not seeming to care how much injury they done to it in pulling it down.

To 6th interrogatory witness answers: That the wood work of the corn mill was entirely destroyed in taking it down; the frame of it was an excellent one; it had not been many years since it was first put up, and it was as good as new; that the old engine and sugar mill were much injured by the manner of taking them down; that both the corn mill and sugar mill works and engine might have been taken down without being injured, had proper care been taken, and due attention been paid to the manner of doing it; the corn mill was a very large one, and attached to the engine, and it was used for grinding corn for family use, and also for the use of negroes and horses on the plantation; that the sugar mill and engine were put up on a wooden frame, and which were mostly destroyed by the manner of taking it down; that the witness cannot state exactly the amount in money of the injury done to the corn mill, sugar mill, and engine, by the manner of taking them down, but believes that it must have amounted to several hundred dollars.

To 7th interrogatory witness answers: That he heard Mr. Edwards say, frequently, when spoken to about the manner of taking down the old engine, that he did not care a damn about the old engine, his only object was to get up the new one.

To 8th interrogatory witness answers: That the defendant returned from the north, and arrived at his plantation about the 18th or 19th of October, 1845; his crop at the time of his arrival was in excellent condition, and considered the best in the neighborhood, and witness heard persons say that it would produce over four hundred hogsheads of sugar; that when defendant arrived the mill was not ready for starting.

To 9th interrogatory witness answers: Yes; that defendant's overseer did every thing in his power to expedite the putting up of the engine and mill, and afforded every facility to the engineers, as also did the defendant, after his arrival on the plantation, who did every thing he could to hasten on the commencement of grinding.

To 10th interrogatory witness answers: That the grinding commenced on the night of the 20th of October—that is, steam was raised in order to commence, but the engineer, Mr. Nultz, had not finished putting in the spring beams under the housings, and, in consequence of which, together with some other derangements of the engine, the mill did not get into operation until the 21st of October; that at the time of starting the machinery was not in good order for operation, owing to the hurried manner in which it was put up; among other things the

horizontal cane carrier could not be used on account of a connecting chain having never arrived at the plantation, and this difficulty existed until defendant could have a chain made, which was about seven or eight days. No; Mr. Edwards was not there; he went away seven or eight days before the grinding commenced.

To 11th interrogatory witness saith: That Daniel Edwards, when he went away, did not take any of his hands with him, but a considerable time previous to his going away he had sent away one of his hands named Henry, (as well as witness can recollect;) when Daniel Edwards went away he left Isaac Edwards, his brother, and a carpenter whom he hired at Baton Rouge, but whose name witness does not now recollect; that shortly after Daniel Edwards left, Mr. Nultz again arrived at defendant's plantation; Mr. Nultz had frequently been employed on defendant's plantation under Mr. D. Edwards, but they, Nultz and Edwards, did not agree together, and Nultz had left and went to work at the plantation of Mr. William Stephens, near Baton Rouge. When Mr. Nultz returned to defendant's plantation, after Daniel Edwards left, he did not go to work until after Isaac Edwards left; the balance of the work, after Daniel Edwards left, was done by Isaac Edwards, by the carpenter hired at Baton Rouge, by a negro carpenter belonging to defendant, and by Mr. Nultz, after Isaac Edwards left.

To 12th interrogatory witness answers: The mill worked very badly. It did not press the cane properly. Defendant frequently complained of this to Mr. Nultz, who said that it could not be remedied, as the spring beams were too weak, and the tempering screws could not be screwed up tight enough.

To 13th interrogatory witness answers: That about ten days after the commencement of the grinding the iron timbers (as they are called) which support the stands, upon which the sixteen feet spur wheel runs, began to move in the direction of the fly-wheel, an effort was made to keep running by a moderate feeding of cane, and great care, but to no purpose, for the cogs began to thump, and the machinery to strain, and it was found necessary to stop; the foundation walls also began to crack. To remedy this difficulty large and substantial pieces of timber were placed lengthwise and transversely on that part of the foundation wall where stands the *kanger*, upon which the main shaft runs. Besides, the large iron rods that had been run through the foundation walls for the purpose of strengthing them, and which had been made to terminate in the walls, were then taken out and about eighteen inches length added to them, and the large washers on the ends of them, which had been worked up the walls, were made to come on the outside of the walls; all this added greatly to the strength of the walls, and to the solidity of that part of the mill work.

To 14th interrogatory witness answers: That besides what he has stated in his answer to the 13th interrogatory, other things were done to remedy the moving of the iron timbers on foundation. Iron rods were made to pass across and through the whole iron foundation, (or iron timbers,) which iron timbers formed the foundation upon which

stands the housings, and the frame upon which the large sixteen feet spur wheel works upon, by which means the housings and the frame of the sixteen feet spur wheel would have to move together if they moved at all. These iron rods were properly secured by screws and nuts.

To 15th interrogatory witness answers: That the different parts of the foundation of the mill and mill works were not connected until they were connected as stated in his answer to the 14th interrogatory; they were entirely separated, and only kept together by the weight of the rollers and the big wheel; it would have greatly strengthened the machinery, if the said iron timbers or foundation had been originally connected, and the want of this connection was a great defect in the mill works, for after the connection had been made, it added greatly to the solidity of the mill works and their movement.

To 16th interrogatory witness answers: That this interrogatory is fully answered in his answers to the 13th and 14th interrogatories.

To 17th interrogatory witness answers: That the brick work and masonry was done under the superintendence and direction of Mr. Daniel Edwards, the plaintiff's head engineer; the masons worked as he directed them, and so did every one that worked at putting up the engine and mill.

To the 18th interrogatory witness answers: That the operation of strengthening the walls and running iron rods through the iron timbers, caused five or six days' delay before they commenced grinding again; after these repairs and alterations, the mill worked much smoother and better until the housing cracked.

To 19th interrogatory witness answers: Yes, another very serious accident happened; it was about three o'clock in the day that it was discovered that one of the housings was cracked, he does not recollect precisely the period, but it was before the freeze which so materially injured the cane; what led to the discovery that the housing was cracked, was that the cane which had been always badly squeezed, was worse squeezed than ever; it was so indifferently pressed, that the begasse came out round, and on examination proved that the housing was materially fractured; cannot tell the reason of the fracture.

To 20th interrogatory witness answers: That when it was discovered that the housing was fractured, the defendant was sent for to a neighbor's, and when he arrived, it was thought almost impossible to go on without a new housing, as the fracture was so considerable and so material; it was decided, however, that they should get larger and stronger tightening bolts to strengthen the housing, and place a wide board on the shute that leads to the rollers, in such a manner as to direct the cane to half the length of the rollers in the direction of the sound housing, by which means the cane would only pass through the half of the length of the rollers on the side next to the sound housing, and also to let the rollers work very loose, and go on in this way until they could get other housings. This plan was accordingly adopted, and accordingly large irons were procured at Baton Rouge, and larger tightening bolts made and put in, and a board placed over the shute leading to the

rollers as above stated, and the rollers were not keyed up tight, but left to work much looser than before; all the above mentioned operations caused a delay of four days.

To 21st interrogatory witness answers: That the mill afterwards, from that time until the end of the grinding, worked very badly; the cane came through the rollers not more than half pressed; that in his answer to the 20th interrogatory he has stated the plan which was adopted to make the cane pass through the rollers; the cane had to be very tightly put on the cane-carrier, and the rollers to be loosened for safety; the cane was constantly very insufficiently pressed, and a great part of the juice lost; which was the case until the end of the grinding.

To 22d interrogatory witness answers: That he heard *that* Mr. Nultz say, that he could not tell the reason why the housing broke; that there was a very tight feed of cane at the time, and no strain on the mill. This was said by Mr. Nultz immediately after the fracture was discovered, and he said, at the same time, that nothing had gone through the rollers that could have strained the mill.

To 23d interrogatory witness answers: No; no new housing was replaced during the grinding.

To 24th interrogatory witness answers: That new housings arrived at the plantation of defendant some time after the grinding season was over; they are much stronger in their make than the one that broke.

To 25th interrogatory witness answers: That the first or old housings were removed in August or September 1846, by Mr. Rees, an engineer; and it was found, upon examination, that it was cracked clear through and across, except a few inches.

To 26th interrogatory witness answers: Yes; the housings, above all other parts of the mill works, require to be strong and capable of bearing strain.

To 27th interrogatory witness answers: That the defendant has a negro slave called Tilman; that ever since witness has been on the defendant's plantation, the said Tilman has been considered by his master and the overseers as a very faithful and intelligent slave, and such is the opinion which witness entertains of him; he is a good mechanic, and a trusty, attentive, and experienced engineer in running an engine; has been running and been helping to run defendant's engine ever since witness has been on his plantation, and, as he understands, for the last twelve or fifteen years past. Has never heard Tilman charged with any neglect of his duties as an engineer, but, on the contrary, has heard steady and experienced engineers express the greatest confidence in him, and that Mr. Nultz seemed to place any confidence in him; that he never heard of any accident or difficulty occurring on his watch while he was acting as assistant engineer; the said Tilman is the same slave spoken of in witness' answer to the 11th interrogatory.

To 28th interrogatory witness answers: That the fly-wheel was put up considerably out of plumb, owing to the hurry in which it was done, and it remains so still.

To 29th interrogatory witness answers: That the defendant furnish-

ed all the assistance in putting up the engine that Mr. D. Edwards required of him, particularly in the way of hands, and the greater part of the time the negro man, Tilman, worked with him as a mechanic, assisting in making joints, and other things about the engine; the defendant always affords every assistance to his engineers, and readily furnishes every thing which is necessary for running the engine and mill, and, as far as witness could see and judge, Mr. Nultz was in the same manner supplied with every thing which he wanted; witness never heard Mr. Nultz say to the contrary; the defendant has several slaves who can start and run an engine, and who are very useful around an engine, and confidential, and Mr. Nultz always had one of those to assist him on his watch; and in the day time, the fireman at the boilers, who knows how to stop and run an engine, was (in the day time,) one-half of his time assisting him, and would often run the engine for Mr. Nultz, and when necessary and required by him, the negro man, Tilman, assisted him. The negro, Tilman, did not work in the field, but was always employed about the sugar-house; Tilman took a regular watch at night, and always run the engine half the night.

To 30th interrogatory witness answers: That fourteen of the iron rollers for the cane carrier were never brought to the plantation of the defendant. These, together with a strap chain, witness heard Mr. Daniel Edwards say, had gone down with Mr. Bringier's engine, he supposed, or with some other engine; they never came to Mr. Conrad's; Mr. Conrad had to have a strap chain made; wooden rollers were also made, but the cane carrier did not work well with them at times, as they were liable to swell and shrink from changes in the weather, as they were then exposed to the weather, no shed being over them.

To 31st interrogatory witness answers: That he thinks a little upwards or about three weeks elapsed from the time they commenced putting up the new engine until the time that the grinding commenced; about two weeks of this time Mr. Conrad's mechanic, Tilman, worked with [the hands] in assisting to put up the engine, and before that he was constantly employed with them, working generally at such work as they called upon him to do.

To 32d interrogatory witness answers: That he has no knowledge that there was any unusual strain on the mill when the housing broke, and that he does not think there was. Witness has no knowledge that any iron or wood, or any other substance than sugar cane, went into the rollers to strain them, nor does he believe that any foreign substance did get into them to strain them. Witness heard Mr. Nultz express great surprise at the time at the accident, saying that he could not account for it, as there was a tight feed of cane at the moment, and nothing had gone into the rollers to strain them. In talking on the subject of the accident, witness heard Mr. Nultz say, that the housings were entirely too weak for the power of the engine besides the mill.

To 33d interrogatory witness answers: That he thinks that [if] a piece of iron or wood, or any very hard substance had gone into or through the rollers, it would have made a very loud noise; for some years ago he

was standing near defendant's old sugar mill, which was much smaller than his present mill, and a piece of small iron chain, by some means or other, was thrown on the carrier and commenced entering the rollers, and it caused a very great shock and noise; and witness thinks, that if any iron, wood, or other very hard substance had gone through the rollers, it would have caused such a shock and noise as would have attracted the attention of every body about the sugar house.

To 34th interrogatory witness answers: Yes. That he was on the plantation of defendant during the grinding season, for the crop of the year eighteen hundred and forty-six. The mill seemed then to perform very well, and gave no difficulty during the whole grinding season. Witness thinks that the improved performance of the mill was owing to two principal causes:

First. The mill and housings had been taken down, and the mill put up again with new and stronger housings, to take off the crop of eighteen hundred and forty-six.

The mill wes this time put [up] by Mr. Rees in a proper and workmanlike manner. It was carefully put up, plumb and in line. Whereas the mill as put up to take off the crop of eighteen hundred and forty-five by Mr. Edwards, was, in the opinion of witness, put up very badly, every thing being out of plumb and out of line; this is the opinion of witness, but he also heard Mr. Nultz say, that the mill was badly put up, and not plumb nor in line. Secondly, the housings of the mill used in the grinding of the crop of eighteen hundred and forty-six, are much stronger than the housings which belonged to the mill during the grinding of the crop of the year eighteen hundred and forty-five. Another reason for the difference in the performance of the mill, at the two different periods above stated, was, that the brace bolts of the rollers that belong to the present housings are much stronger than those that belonged to the broken housings, and the keys and keyholes of the present bolts are twice as wide as the keys and key holes of the bolts of the broken housings.

To 35th interrogatory witness answers: Yes, that Mr. Nultz did speak to him, witness, about the manner in which the mill and engine had been put up. When witness on one occasion called his attention to the manner in which some cogs were wearing on the corners, said Nultz replied that that could not be then remedied as the mill had not been put up plumb and in line. This conversation occurred at the sugar house of defendant, about the middle of the rolling season.

To 36th interrogatory witness answers: That he does not think that Mr. Nultz was an attentive engineer.

To 37th interrogatory witness answers: That Mr. Reese took down the mill after the grinding season of eighteen hundred and forty-five; Mr. *Kup* was with him a day or two, but was taken sick and could not work. Witness did not see the old boxes, but the journals were much worn; some new boxes were put in, from which witness judges that they were put in to supply the place of boxes that were worn. One of the slides of the engine was very much worn.

To 38th interrogatory witness answers: That Mr. John Collins, deceased, was the overseer of defendant for his crop of eighteen hundred and forty-five. Mr. Collins was a very capable manager, and a very active and attentive overseer. He was very zealous in the discharge of his duties, and was very anxious to have every thing ready to begin to take off the crop early. He gave every assistance to the engineers in putting up the engine and mill; he was very watchful about the sugar house, requiring from every one attention to their business.

To 39th interrogatory witness answers: That one set of defendant's kettles would have taken off from nine to eleven hogsheads per twenty-four hours; and the other set from seven to nine hogsheads.

To 40th interrogatory [witness answers:] That defendant made between four hundred and twenty and four hundred and thirty hogsheads from his crop of eighteen hundred and forty-five. That defendant's crop of that year was a very fine one and a large one; but that he does not know the quantity, but it was the largest and best crop that witness has ever seen on defendant's place. If cane could be supplied for both sets of kettles, and the engine in good order, they could make from sixteen to twenty hogsheads per twenty-four hours, the engine when in good order being much ahead of the kettles.

To 41st interrogatory witness answers: There was a great deal [of] cane lost in the fields, but witness cannot state accurately the quantity. From the commencement to the end of the rolling season, but particularly after the housing broke, the cane was very insufficiently pressed, and much of the juice lost in consequence of the deficient manner in which the cane was pressed by the rollers.

To 42d interrogatory witness answers: Yes, there was a severe freeze; he does not recollect the precise date, but thinks, to the best of his recollection, that it was in the latter part of November; the cane was very much injured by that freeze, and other freezes which succeeded it for several successive days; the injury was as great as a freeze could well cause to sugar cane. The defendant did lose a great deal of cane by those successive freezes; witness does not think that defendant would have sustained this loss if the engine and mill had been ready in time and worked well, as defendant might have commenced at least ten days earlier to grind and take off his crop had the engine been put up and ready; and a great deal of time was lost by the various accidents which happened to the mill, and the consequent delays; and at the time the housings broke, the defendant had rolled up the cane which was most distant from his sugar house. The cane left standing when the housing broke, was near enough to the sugar house to enable the defendant with his force to supply, during a portion of the cane enough for both his sets of kettles, but after the housing broke, the mill could not supply more than enough juice to keep the small set of kettles going, and this last cause caused great delay in taking off the crop.

To 43d interrogatory witness answers: That the last cane ground

was so badly frozen and injured by the freeze, that the juice could not be made into sugar, and a very inferior syrup was made from it.

To 44th interrogatory witness answers: That defendant was ready to commence grinding his crop on the tenth of October, if his mill and engine had been ready.

To 45th interrogatory witness answers: That he thinks is within the bounds of moderation in saying, as he does, the defendant lost one hundred hogsheads by the imperfections of the sugar mill, the delays in putting it up, and the subsequent accidents that happened to it.

To 46th interrogatory witness answers: That he never counted defendant's force, but thinks there must have been between seventy and eighty hands employed during the grinding season; defendant had full and good teams, and quite in proportion to his force; and witness thinks that had defendant commenced grinding on the tenth of October and the engine and mill worked well, he could, with his hands and teams, without doubt, have saved the whole of his crop. The number of hogsheads which defendant could have made depends so much upon the goodness of the roads and the nearness of the cane, that witness finds it difficult to answer this interrogatory. If the roads were good, and the cane far off, he might have made ten; if the cane was near and the roads good, he might have made eighteen.

To 47th interrogatory witness answers: That he is not aware of any other fact material in this suit.

To 48th interrogatory witness answers: That he heard Mr. Daniel Edwards say frequently, that he was employed by the plaintiff or sent by the plaintiff to put up defendant's engine, and also to put up other engines furnished by the plaintiff; that said Edwards also spoke of the nature of the arrangement between him and the plaintiff. Mr. Nultz told witness that he was sent by the plaintiff to run defendant's engine, but that defendant was to pay him for it; that he said he was to run the engine during that grinding season.

In the circuit court of the United States, for the fifth circuit, and district of Louisiana.

DAVID GRIFFEY }
vs.
F. D. CONRAD. }

The plaintiff in the above named cause, reserving to himself the benefit of all legal exceptions, propounds on his part to William Neff the following cross interrogatories.

Cross interrogatories.

First. Where do you reside; and how long have you resided in your present place of residence; how long have you resided continuously in the parish of east Baton Rouge?

Second. Have you any interest in the event of this suit; will you gain any thing should the suit be decided in favor of F. D. Conrad, the defendant?

Third. Do you know the plaintiff, David Griffey; have you ever had

any quarrel or misunderstanding with him; are you conscious of the existence of any ill feeling between you?

Fourth. Do you know A. Coon, of Cincinnati, Ohio; have you ever had any quarrel or misunderstanding with him; are you conscious of the existence of any ill feeling between you?

Fifth. Are you now or have you been in the employment of F. D. Conrad, of Baton Rouge; how long have you been in his employment; are you now on friendly terms with him; and do you feel very well disposed towards him?

Sixth. In answering the forty-eighth interrogatory propounded to you by Messrs. Benjamin & Micon, the counsel of F. D. Conrad, have you spoken of what you saw and heard with your own eyes and ears; or, do you speak from information derived from other persons? Are you willing now to swear that you have a distinct recollection, founded on your own personal observation, of all the facts you have stated in answer to those forty-eight interrogatories?

Seventh. Have you had any conversation at any time with F. D. Conrad, the defendant, on the subject of your giving evidence in this suit; how often have you conversed with him on the subject; did these conversations of Conrad refresh your recollection of the facts you have sworn to in answer to the forty-eighth interrogatories; was your recollection of them just as good before these conversations as after?

Eighth. Are you now about to leave the State of Louisiana; if so, where are you going to; how long do you expect to be absent; do you expect in the course of the next twelve months to be in the city of New Orleans; and if so, about what date, as near as you can say?

Ninth. Are you a practical engineer; how long have you been so; with whom did you serve your time; are you now in business for yourself; or are you in the employment of any machinist or manufacturer in Cincinnati or elsewhere; and if so, what is the name of your employers; if in business solely on your own account, where is your establishment?

Tenth. Have you ever constructed, or manufactured, or assisted in constructing or manufacturing, a steam mill for grinding sugar; if so, how many; are any of them in Louisiana; and how many; in what parish, and on whose plantations are they to be found?

Eleventh. Have you ever put up, or assisted in putting up, a steam mill for grinding sugar; if so, how many; are any of them in Louisiana, and how many; in what parish, and on whose plantations are they to be found?

Twelfth. Have you ever run, or assisted in running a steam mill for grinding sugar; if so, how many; are any of them in Louisiana, and how many; in what parish, and on whose plantations are they to be found?

Thirteenth. Are you personally acquainted with Daniel Edwards, Isaac Edwards, and Leonard M. Nutts, or either of them; how long have you known all or either of them; what has been the occupation of all or either of them during the time you have known them?

Fourteenth. Were you yourself present at the time when the accident of the breaking of the housing mentioned in the nineteenth chief interrogatory occurred; if present, in what capacity were you there; were you attending upon the engine; was the engine running; were you acting as engineer; were you alone; was any one with you; were you asleep or awake; who was with you; was he white or black; free or slave; who first discovered the accident?

Fifteenth. Did you see the housings at the very time they broke; what is a housing; how soon after the housing broke did you see it; how do you know the cause of the accident; who told you about it; where were you at the time when the accident was said to have happened?

The attorney of the plaintiff specially objects to the questions in chief interrogatory twenty-seven, touching the character and reputation of defendant's slave Tilman, as a question not involved in the issue between the parties. The said attorney also objects to the whole of the thirty-third chief interrogatory, as not inquiring into witnesses knowledge of facts, but only into his opinion of the probable existence of facts and inferences therefrom.

Sixteenth. Were you on defendant F. D. Conrad's plantation in the month of October, 1845; were you there on the first day, and on every day of that month; on what [days] of that month were you there?

Seventeenth. Are you conversant with the business of managing a sugar plantation; what is your means of knowing that business; for what length of time have you been engaged in it, and on whose plantations in this State?

Eighteenth. At what date precisely, or as near as you can recollect, did the first frost occur in the fall of 1845; was it a white or a black frost?

THOMAS J. DURANT,
Attorney of David Griffey.

Answers to cross interrogatories propounded to William Neff.

In answer to the cross interrogatories of the plaintiff, the witness, William Neff, answers:

To 1st cross interrogatory witness answers: That he resides principally in the parish of East Baton Rouge, and has resided there nearly five years; that he has been absent several times from the parish, and at one time during three or four months.

To second cross interrogatory witness answers: That he has no interest in the event of this suit, and that he will gain nothing should the suit be decided in favor of F. D. Conrad, the defendant.

To 3d cross interrogatory witness answers: That he does not know the plaintiff, David Griffey; that some time last summer he saw a gentleman at defendant's plantation in company with the defendant that he was told was Mr. Griffey, and that this is all the knowledge he

has of him; that he, witness, has never had any quarrel or misunderstanding with the plaintiff, nor is he conscious of the existence of any ill feeling between him and plaintiff.

To 4th cross interrogatory witness answers: That he does not know A. Coon of Cincinnati, Ohio, nor has he ever had any quarrel or misunderstanding with, nor is he conscious of the existence of any ill feeling between him and A. Coon.

To 5th cross interrogatory witness answers: That he is now and often has been in the employment of F. D. Conrad, of the parish of East Baton Rouge, (the defendant;) he has been in the said Conrad's employment at various times during nearly five years, and is now on friendly terms with him, and feels well disposed towards him.

To 6th cross interrogatory witness answers: That in his answers to the forty-eight interrogatories propounded to him by Messrs. Benjamin and Micon, the counsel of F. D. Conrad, he always spoke of what he saw and heard with his own eyes and ears; that if he in his answers to said interrogatories had spoken any fact, opinion, or information derived from others, he has so stated it, and mentioned the person from whom he derived it; witness answers, that he has stated no fact of which he has not a distinct enough recollection to know that [he] is stating the truth, and has always stated from his own personal knowledge and observation; witness thinks, that in all his said answers, if he has spoken of his information as derived from others, he has stated it, and he thinks, too, that he has always referred to the person who told him the fact, except in speaking of the slave Tilman, and saying that he understood that he had been running an engine for a certain number of years before witness went on defendant's plantation; he did not say from whom he understood this fact, for he does not recollect; nor does he recollect who told him that the person whom he saw in company with defendant was Mr. Griffey, as he has stated in his answer to one of plaintiff's cross interrogatories; and if [he] has omitted to state anything within his knowledge, he is not aware of it.

To 7th cross interrogatory witness answers: That the defendant had a conversation with him some time in the month of March last, in relation to the facts about which he, witness, has been deposing in this suit; he, defendant, had no other conversation with him, either before or since, upon that subject; that this conversation in no way refreshed his memory in relation to said facts; defendant did not attempt to refresh his memory, but merely asked him what he recollected of the facts; that his recollection of the facts has not been improved by any conversation with the plaintiff, with one exception, and that exception was this: defendant stated to witness, that Nultz had told him that the board which was placed in the shute that leads to the rollers of the sugar mill, was placed so as to run the cane on two-thirds of the length of the rollers; and witness answered the defendant that Nultz was mistaken, that the board was placed so as to run the cane on only half the length of the rollers, and that witness has since exam-

Fourteenth. Were you yourself present at the time when the accident of the breaking of the housing mentioned in the nineteenth chief interrogatory occurred; if present, in what capacity were you there; were you attending upon the engine; was the engine running; were you acting as engineer; were you alone; was any one with you; were you asleep or awake; who was with you; was he white or black; free or slave; who first discovered the accident?

Fifteenth. Did you see the housings at the very time they broke; what is a housing; how soon after the housing broke did you see it; how do you know the cause of the accident; who told you about it; where were you at the time when the accident was said to have happened?

The attorney of the plaintiff specially objects to the questions in chief interrogatory twenty-seven, touching the character and reputation of defendant's slave Tilman, as a question not involved in the issue between the parties. The said attorney also objects to the whole of the thirty-third chief interrogatory, as not inquiring into witnesses knowledge of facts, but only into his opinion of the probable existence of facts and inferences therefrom.

Sixteenth. Were you on defendant F. D. Conrad's plantation in the month of October, 1845; were you there on the first day, and on every day of that month; on what [days] of that month were you there?

Seventeenth. Are you conversant with the business of managing a sugar plantation; what is your means of knowing that business; for what length of time have you been engaged in it, and on whose plantations in this State?

Eighteenth. At what date precisely, or as near as you can recollect, did the first frost occur in the fall of 1845; was it a white or a black frost?

THOMAS J. DURANT,
Attorney of David Griffey.

Answers to cross interrogatories propounded to William Neff.

In answer to the cross interrogatories of the plaintiff, the witness, William Neff, answers:

To 1st cross interrogatory witness answers: That he resides principally in the parish of East Baton Rouge, and has resided there nearly five years; that he has been absent several times from the parish, and at one time during three or four months.

To second cross interrogatory witness answers: That he has no interest in the event of this suit, and that he will gain nothing should the suit be decided in favor of F. D. Conrad, the defendant.

To 3d cross interrogatory witness answers: That he does not know the plaintiff, David Griffey; that some time last summer he saw a gentleman at defendant's plantation in company with the defendant that he was told was Mr. Griffey, and that this is all the knowledge he

has of him; that he, witness, has never had any quarrel or misunderstanding with the plaintiff, nor is he conscious of the existence of any ill feeling between him and plaintiff.

To 4th cross interrogatory witness answers: That he does not know A. Coon of Cincinnati, Ohio, nor has he ever had any quarrel or misunderstanding with, nor is he conscious of the existence of any ill feeling between him and A. Coon.

To 5th cross interrogatory witness answers: That he is now and often has been in the employment of F. D. Conrad, of the parish of East Baton Rouge, (the defendant;) he has been in the said Conrad's employment at various times during nearly five years, and is now on friendly terms with him, and feels well disposed towards him.

To 6th cross interrogatory witness answers: That in his answers to the forty-eight interrogatories propounded to him by Messrs. Benjamin and Micon, the counsel of F. D. Conrad, he always spoke of what he saw and heard with his own eyes and ears; that if he in his answers to said interrogatories had spoken any fact, opinion, or information derived from others, he has so stated it, and mentioned the person from whom he derived it; witness answers, that he has stated no fact of which he has not a distinct enough recollection to know that [he] is stating the truth, and has always stated from his own personal knowledge and observation; witness thinks, that in all his said answers, if he has spoken of his information as derived from others, he has stated it, and he thinks, too, that he has always referred to the person who told him the fact, except in speaking of the slave Tilman, and saying that he understood that he had been running an engine for a certain number of years before witness went on defendant's plantation; he did not say from whom he understood this fact, for he does not recollect; nor does he recollect who told him that the person whom he saw in company with defendant was Mr. Griffey, as he has stated in his answer to one of plaintiff's cross interrogatories; and if [he] has omitted to state anything within his knowledge, he is not aware of it.

To 7th cross interrogatory witness answers: That the defendant had a conversation with him some time in the month of March last, in relation to the facts about which he, witness, has been deposing in this suit; he, defendant, had no other conversation with him, either before or since, upon that subject; that this conversation in no way refreshed his memory in relation to said facts; defendant did not attempt to refresh his memory, but merely asked him what he recollected of the facts; that his recollection of the facts has not been improved by any conversation with the plaintiff, with one exception, and that exception was this: defendant stated to witness, that Nultz had told him that the board which was placed in the shute that leads to the rollers of the sugar mill, was placed so as to run the cane on two-thirds of the length of the rollers; and witness answered the defendant that Nultz was mistaken, that the board was placed so as to run the cane on only half the length of the rollers, and that witness has since exam-

ined the manner in which the board was placed, and is certain that the witness, was right, and that he, Nultz was mistaken.

To 8th cross interrogatory witness answers: No, he does not expect to leave the State of Louisiana; he does not expect to *to* in the course of the next twelve months, to be in the city of New Orleans.

To 9th cross interrogatory witness answers: No, he is not a practical engineer, but has worked at mill-wrighting and gin-wrighting, and once put up a saw mill; and that, as he has already stated in his answer to another interrogatory, he is now in the employment of the defendant.

To 10th cross interrogatory witness answers: No, he has never had anything to do with constructing a steam mill for grinding sugar.

To 11th cross interrogatory witness answers: No, he has never put, nor assisted in putting up, a steam mill for grinding sugar.

To 12th cross interrogary witness answers: No, he never did run, or assist in running, a steam mill for grinding sugar.

To 13th cross interrogatory witness answers: That his only acquaintance with them was while they were at the defendant's plantation, and that he never knew them in any other capacity than as of engineers; Mr. Isaac Edwards appeared to be learning the trade of an engineer.

To 14th cross interrogatory witness answers: That when the housing was first discovered to be broken, he, witness, was standing at the cane carrier, which is not far off from the engine, and what led to its discovery of the fracture was that the begasse began to come out round; witness was then in the capacity of assistant overseer; the engine was running; witness was not acting as engineer. Mr. Nultz was running the engine; Mr. Collins, the overseer had just come to the mill; witness was awake; Mr. Collins and Mr. Nultz were the only white persons that were there besides witness; witness does not recollect who first discovered the accident, but supposes it was Mr. Nultz or Mr. Collins.

To 15th cross interrogatory witness answers: That as soon as he heard that the housings were broke, he went and saw it; that the housings are the stands or cheeks upon which the rollers turn; witness does not know the cause of the accident; Mr. Collins first told witness about the accident; witness was at the cane carrier when the accident was discovered.

To 16th cross interrogatory witness answers: Yes; he was there during on defendant's plantation during the whole of the month of October, except a part of one day, about the middle of the month.

To 17th cross interrogatory witness answers: That he has no other knowledge of the business of managing a sugar plantation than what he has acquired by acting as assistant overseer for defendant about his sugar house during several grinding seasons.

To 18th cross interrogatory witness answers: That the first frost to do any injury *injury* to the sugar cane occurred as early as witness recollects, about the last of November.

WILLIAM NEFF.

Sworn to and subscribed before me, this eighth day of May, eighteen hundred and forty-seven. JAMES COOPER, *J. P.*

STATE OF LOUISIANA, *parish of East Baton Rouge.*

I, James Cooper, a justice of the peace in and for the parish of East Baton Rouge, and State of Louisiana, do hereby certify, that on this 8th day of May, 1847, I caused the witness, William Neff, to appear before me at my office, in the parish aforesaid; and said witness having been by me first solemnly sworn, and carefully examined on the annexed interrogatories and cross interrogatories, I reduced his answers to writing in his presence, and said answers having been by me read to and understood by said witness, he subscribed the same in my presence as his deposition in the cause styled in the caption of said deposition. And I further certify, that the questions propounded to said witness were the annexed interrogatories and cross interrogatories, and that his answers thereto constitute the foregoing deposition; that the said deposition has been altered or changed in nothing since the same was subscribed by the witness, nor has said deposition left my possession up to the time of *of* ensealing and delivering the same. And I further certify, that I am not of counsel for either party in the cause in which the foregoing deposition is to be used, nor am I in any manner interested in the result thereof. All which I hereby certify under my hand and private seal at the parish of East Baton Rouge aforesaid, this 8th day of May, A. D. 1847.

JAMES COOPER, *J. P.* [SEAL.]

Deposition of S. Allain, annexed to bill of exceptions.

Circuit court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana, to James Cooper, or to any judge or justice of the peace residing in the parish of East Baton Rouge.

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you Sosthene Allain, and him duly examine on oath touching and concerning certain matters and things in a case now depending in the said court, wherein David Griffey is plaintiff and F. D. Conrad is defendant; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court, without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New Orleans, this seventeenth day of May, anno domini 1847, and the 71st year of the independence of the United States of America.

[SEAL.]

ED. RANDOLPH, *Clerk*,
By F. N. HARALSON, *D. C.*

DAVID GRIFFEY vs. F. D. CONRAD. } U. S. circuit court.

Interrogatories to be propounded to Sosthene Allain, a material witness for defendant, residing in the parish of East Baton Rouge.

Commission to be addressed to James Cooper, justice of the peace, or any other justice of the peace in said parish.

Interrogatory 1st. Where do you reside; how far from defendant's; what is your occupation; and how long have you been engaged in this occupation?

Interrogatory 2d. Did you visit the defendant's sugar house during the grinding of his crop of the year 1845? If yes, state when and how often, as near as you can recollect.

Interrogatory 3d. If you visited defendant's sugar house as inquired of in preceding interrogatory, had any accident happened to his sugar mill and machinery; if so, of what nature?

Interrogatory 4th. Did the iron foundation of the mill and mill works, called the iron timbers, or bed, appear to have moved; if yes, how much, and in what direction; did the foundation wall appear to have been cracked; if yes, in what manner and to what extent; what effect had that accidents or defects on the working of the mill; and what was done to remedy the difficulties?

Interrogatory 5th. Were the different parts of the foundation of the mill and mill works, commonly called iron timbers, or bed, connected; if not, how were they separated; what effect in strengthening the machinery would such connection have produced; what effect did the want of such connection produce in the machinery?

Interrogatory 6th. Did you know of more than one accident happening to defendant's sugar mill during the grinding; if yes, what was their nature; what happened to the housings, and when?

Interrogatory 7th. If the housings broke, do you recollect to have seen any contrivance by which the cane was made to pass only through a portion of the rollers; if yes, what was the nature of the contrivance, and what the object of it, and how did it succeed? And state whether the cane, by means of it, was or was not as expeditiously and thoroughly pressed as if the accident had not happened. State all you know on this subject.

Interrogatory 8th. Had you any knowledge of the quality and extent of the defendant's crop of sugar cane for the year 1845, as it stood before the grinding season; if yes, how did you derive this knowledge; did you ever pass through the defendant's cane field; if so, at what season was it, and for what purpose, and how often, and every thing about the matter?

Interrogatory 9th. What was your opinion of the quality of defendant's cane crop, and the extent of it; what was your opinion of the number of hogsheads of sugar that defendant would make; and at what time did you form this opinion?

Interrogatory 10th. What was the character of the severest freeze or freezes which occurred during the grinding season of the year 1845—say during the months of October, November, and December of that year? State particularly the period or periods, and what injury it caused the cane crops, and the nature and extent of such injury.

Interrogatory 11th. Is it of your knowledge or opinion that defendant sustained any loss by the injury done his cane crop by said freeze? If yes, state how do you derive your knowledge, and what is the foundation of your opinion; and what was the nature and extent of the injury sustained by defendant; and at what time did the freeze or freezes occur.

Interrogatory 12th. If defendant's engine and mill had been put up in complete readiness for grinding by the 1st of October, and no accident had happened to the mill and engine, how much of his crop could he have taken off before injury from the freeze?

Interrogatory 13th. The defendant having started on the 20th or 21st of October, if no accident had happened to his mill or engine, in what time could he have taken off his crop? State the reasons of your opinion in answer to this interrogatory.

Interrogatory 14th. At what time are sugar planters anxious to commence grinding, and for what reasons?

Interrogatory 15th. Was the 20th or 21st October late or early to commence taking off such a crop as was Mr. Conrad's; if late, how much sooner should he have commenced his grinding?

Interrogatory 16th. If accidents happened to defendant's sugar mill, machinery, &c., as inquired of in preceding interrogatories, then say what delay occurred in consequence; how much cane did he lose; what is your opinion of the extent of his loss, and the grounds of your opinion?

Interrogatory 17th. How did the mill press the cane after these accidents; what experience and practical acquaintance have you with the machinery of sugar mills and engines?

Interrogatory 18th. What importance do you attach to the strength of the housings of a sugar mill?

Interrogatory 19th. Was the defendant's cane carrier put up like the one attached to your mill in 1845; if no, what is the difference; what difference in the number of pieces, chains, and rollers?

Interrogatory 20th. What kind of weather prevailed after the freeze; how were the roads; did the teams suffer, and from what cause?

Interrogatory 21st. What was the quality of the sugar made after the severe freeze; was any of the juice made into syrup, and how much, and for what reason; how much, if any, cane was left in the field?

Interrogatory 22d. Did you see and converse with the white engineer, (who ran Mr. Conrad's engine,) just after the last accident to the mill; if yes, do you recollect his name; what reason did he assign for the housing of the mill being fractured; did you hear any thing about a piece of iron or wood running into the rollers; if yea, what and from whom?

Interrogatory 23d. Were you acquainted with John Collins; if yes, what was his character and his reputation as an overseer; is he dead; if yes, when did he die; in whose employment was [he] when he died?

Interrogatory 24th. Who was overseer for defendant during the year 1845?

Interrogatory 25th. Was defendant absent from the State during the summer and all of the year 1845; if yes, when did he leave, and when did he return?

Interrogatory 26th. Are you acquainted with any fact, the disclosure of which would be material in this case for defendant? If yes, please state the same as if particularly interrogated about it.

BENJAMIN & MICON, *of counsel.*

No cross interrogatories.

THOMAS J. DURANT,
Attorney of Griffey.

STATE OF LOUISIANA, *parish of East Baton Rouge.*

DAVID GRIFFEY
vs.
F. D. CONRAD.

In the circuit court of the United States, for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

Be it known, that, on this 21st day of December, in the year of our Lord eighteen hundred and forty-seven, by virtue of a commission from the aforesaid circuit court of the United States, which commission is hereunto annexed, I did cause to come before me, the undersigned justice of the peace, in and for the parish of East Baton Rouge aforesaid, and residing therein, Sosthene Allain, also residing in said parish, and stated to him that, attached to said commission, there had come certain interrogatories of defendant, (the plaintiff putting no cross interrogatories,) to be propounded to him as a witness in the above entitled suit; and then having sworn the said Sosthene Allain according to law, I proceeded to examine him by propounding to him the said interrogatories, to which he answered as follows:

To 1st interrogatory the witness answers: That he resides in the parish of East Baton Rouge, about four miles from the defendant's; that he is a sugar planter by occupation, and has been engaged in that occupation during the twenty-five years.

To 2d interrogatory the witness answers: That he visited the defendant's sugar house, during the grinding of the crop of the year 1845, once in the month of November, and once in the month of December, of that year; the last time, in company with some gentlemen, for the purpose of examining the machinery.

To 3d interrogatory the witness answers: That, at the time he visited defendant's sugar house last as above stated, the plummer block, on which the shafts of the fly-wheel rests, had moved into the wall, and

the wall was cracked, and some moving of the iron foundation had taken place.

To 4th interrogatory witness answers: That they did move slightly in the direction of the fly-wheel, so as to make it improper to go on while they were in that position; that the wall was cracked by the plummer block, so as to make it dangerous to proceed without remedying it, and the mill could not possibly work without remedying it, as the pinion would have been thrown out of gear; that the cracking of the wall was caused by the bearing of the plummer block being insufficient—that is, the bed plates of the plummer block were too short; that there was no deficiency in the brick work of the wall, that appeared to be strong and sufficient; that another reason of the cracking of the wall was, that the engineer did not cause the cross strengthening bolts that traverse [the] wall to be carried through the wall and clamped with the large clamps attached to them on the outside of the wall; but, on the contrary, worked them about a foot inside the wall, by which means the bolts were of no service to that part of the wall which cracked; that he, witness, advised that the bolts should be lengthened and carried through the wall, and clamped on the outside, and that a large piece of timber should be run under the plummer blocks and extended into the mill wall, and also iron rods to be run through the iron timbers or foundation, so as to connect the whole together; that this was done according to his advice; that he has seen all the work there since; and, so far as he understands, there has been no difficulty about the wall or timbers since.

To 5th interrogatory witness answers: That the iron timbers or bed plates were not connected until the iron rods were run through them, as stated in his answer to the fourth interrogatory; that, until then, they were totally unconnected; that the bed plates being entirely too weak, they required to be connected, in some manner or other, to prevent the mill from moving on its foundation; and if the mill moved on its foundation, it would throw it out of line and subject it to be broken.

To 6th interrogatory witness answers: That he was afterwards at defendant's sugar house, and saw his mill in operation, and the inside housing was broke, in consequence of which he had to place a board on the cane shute so as to feed only on one end of the rollers—the ends next to the housing which was not broken; consequently, the cane was very imperfectly pressed.

To 7th interrogatory witness answers: That his answer to 6th interrogatory contains an answer to this interrogatory.

To 8th interrogatory witness answers: That — had a knowledge of the quality and extent of defendant's crop of sugar cane of the year 1845; that, admiring the crop of defendant very much, he took another planter, in the month of September, through the crop to examine it.

To 9th interrogatory witness answers: That, in that year, the defendant's crop was an equal crop of remarkable promise; that he formed this opinion in the month of September.

To 10th interrogatory witness answers: That, in the grinding season of 1845, early in December, to the best of his recollection, but it may have been later, as witness does not recollect precisely, there was a very severe freeze, which done great injury to the cane.

To 11th interrogatory witness answers: That he was not at defendant's plantation after the freeze, and made no inquiry of the extent of his losses, and therefore cannot answer pointedly to this interrogatory; but thinks, that if he did not make between five and six hundred hogsheads, he must have sustained some injury; that he derives his information from the appearance of defendant's crop in the month of September and the nature of the freezes; that, as has already stated, he does not recollect precisely the time in December when the freeze occurred.

To 12th interrogatory witness answers: That he is not sufficiently acquainted with the force and equipage of defendant to answer this question categorically, but thinks that he ought to have commenced early in October to take off such a crop.

To 13th interrogatory witness answers: That, for the reasons stated in his answer to the 12th interrogatory, he cannot give a categorical answer to this interrogatory.

To 14th interrogatory witness answers: That it depends on the size of the crop. If the crop is large, it would be wise to commence early in October in order to avoid the danger of frost.

To 15th interrogatory witness answers: That that period was late to commence taking off such a crop as that of the defendant in 1845. It would have been prudent to commence as early as the 10th of October, rating the defendant's force according to the size of the crop he cultivated.

To 16th interrogatory witness answers: That he is not in possession of sufficient data to give answer to this interrogatory.

To 17th interrogatory witness answers: That, when witness viewed the operation of defendant's mill after the fracture of the housing, the cane, as he has already stated, was very insufficiently pressed, and he must have lost considerable juice; besides, owing to the cane passing through only a portion of the rollers he must have lost considerable time. That he has, during the last twenty-five years past, taken a great interest in machinery, and has had a great deal of practical experience in relation to it, and particularly in relation to sugar mills and engines.

To 18th interrogatory witness answers: That the most important parts of a sugar mill are strong housings and shafts, and that strong housings are indispensable.

To 19th interrogatory witness answers: That the cane carrier is not like the one which was attached to his (witness's) sugar mill in 1845. It was not provided with near the number of friction rollers which was attached to the cane carrier of witness, and that friction rollers are very important in the operation of a cane carrier.

To 20th interrogatory witness answers: That, after the freeze, rainy weather prevailed, and the roads were very bad, in consequence of which teams must have suffered very much.

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To 21st interrogatory witness answers: That he has no recollection of the facts inquired of in this interrogatory.

To 22d interrogatory witness answers: That he did converse with the engineer, whose name he believes was Nutts, immediately after the breaking of the housing; and that the reason assigned by said engineer, Nutts, for the breaking of the housing was, that they were entirely too weak; that witness did not hear any thing said by any one about a piece of iron or wood having run into the rollers.

To 23d interrogatory witness answers: That he was acquainted with John Collins, deceased, and he was considered an excellent man, and a good overseer. That he does not recollect the precise time of his death, but thinks it occurred some time in 1846, and he was in defendant's employment at the time of his death.

To 24th interrogatory witness answers: That John Collins was overseer for defendant in the year 1845.

To 25th interrogatory witness answers: That the defendant left home the early part of June, and returned about the 18th of October, 1845, making an absence of about four months and some days.

To 26th interrogatory witness answers: That he considers the bed plates and housings furnished by Mr. Griffey for defendant's sugar mill entirely too weak, and that that was the cause of their breaking.

SOSTHENE ALLAIN.

Sworn to and subscribed before me this 21st day of December, 1847.

JAMES COOPER, *J. P.*

STATE OF LOUISIANA,
Parish of East Baton Rouge.

I, James Cooper, a justice of the peace in and for the parish and State aforesaid, do hereby certify, that on this 21st day of December, 1847, I caused Sosthene Allain, the witness, to appear before me at my office in the parish and State aforesaid; and said witness having been by me first solemnly sworn and carefully examined on the annexed interrogatories and cross interrogatories, I reduced his answers to writing in his presence, and said answers having been by me read to and understood by said witness, he subscribed the same in my presence as his deposition, in the cause styled in the caption of said deposition; and I further certify, that the questions propounded to said witness were the annexed interrogatories and cross interrogatories, and that his answers thereto constitute the foregoing deposition; that said deposition has been altered or changed in nothing since the same was subscribed by the witness, nor has said deposition left my possession up to the time of ensealing and delivering the same; and I further hereby certify, that I am not of counsel for either party in the cause in which the foregoing deposition is to be used, nor am I in any manner interested in the result thereof.

All which I hereby certify, under my hand and private seal, at the parish of east Baton Rouge aforesaid, this 21st day of December, A. D. 1847.

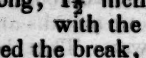
JAMES COOPER, *J. P.* [SEAL.]

Letter referred to in defendant's bill of exceptions.

(Inserted herein by direction of defendant's counsel.)

NEW ALBANY, *April* 3*d*, 1846.

Mr. D. GRIFFEY, DEAR SIR: My sister handed me a few lines addressed to her, requesting me to send my affidavit respecting F. D. Conrad. I have no knowledge of the information you wish, unless it be the accident of the breaking of one of the housings of his sugar mill, and all that I can say upon the subject is, that the night when, in my candid opinion, the accident happened, I was awakened by the surging of the engine; it completely stopped under a good head of steam. I then ordered the negro man [who] was running the engine at the time, to examine well in the cane shute, supposing something harder than cane to have passed in the carrier, and there was found a piece of iron that broke off of one of the cane carts wedged in front of rolls, too large to pass; in the shape was thus,



about 16 inches long, 1¼ inch wide, where it came in contact with the other, with the rolls; and from that time until I discovered the break, which was the next day, I found it difficult to keep that end of rolls tight; I then forged new tie-bolts with keys on the outer ends, to keep them firmly keyed, and by so doing we were enabled to take off the crop without losing but 3 hours by the break, for whilst I was forging the bolts the engine was still running.

Previous to the breaking of the housing, we had another small stoppage, but no accident; the wall was very green, and likely to give way; under the spur wheel stand bed plates, which rendered it firm and secure during the season, and will always remain so under any reasonable usage; this stoppage was the 30th of October, 1845.

If the overseer, Mr. Collins, had *of* left, Mr. D. Edwards commenced his work when he wanted to, I do candidly think the walls would have been more firm, and the least fear would have been overcome; there was no accident, but the bolts were placed to render the work more secure upon the foundation; and as for the machinery in general, it was a good strong piece of work, hard to be surpassed.

LEONARD N. NUTZ.

To DAVID GRIFFEY,

State of Indiana, Floyd county, ss.

On the 3d day of April, A. D. 1846, before the subscriber, justice of peace in and for the said county, and authorized by law to administer oaths, personally appeared Leonard N. Nutz, and made oath that the above is a true statement of F. D. Conrad's sugar mill and engine.

LEONARD N. NUTZ.

Given under my hand and seal, this 3d day of April, 1846.

SAM'L G. WILSON, *J. P.* [SEAL.

Judgment.

DAVID GRIFFEY vs. F. D. CONRAD. } No. 1556.

The court being satisfied with the verdict of the jury rendered in this case on the 20th of February, 1849, and recorded, doth now order, adjudge, and decree, that David Griffey, the plaintiff, do recover from Daniel Frederick Conrad, the defendant, the sum of three thousand seven hundred and eighty-one dollars and fifty-eight cents, together with interest on said sum, from the 5th of January, 1847, at the rate of five per centum per annum, until final payment and the costs of this suit.

Judgment rendered February 21st, 1849; signed March 1st, 1849.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Petition for a writ of error.

To the honorable T. H. McCaleb, judge of the circuit court of the United States, for the State of Louisiana.

The petition of Frederick D. Conrad, of the parish of E. Baton Rouge, respectfully shews, that petitioner is informed and believes, that there is error in the final judgment rendered against him by this court in the suit of David Griffey vs. Petitioner.

Wherefore petitioner prays that the annexed bond be considered, that a writ of error be granted to operate as a supersedeas, to the Supreme Court of the United States, and that all other proceedings be had in the premises which the premises require.

BENJAMIN & MICON, *of counsel.*

A writ of error is allowed as a supersedeas on petitioner's giving bond conditioned according to law, with Abner L. H. Duncan as surety, in the sum of ten thousand dollars.

March 1st, 1849. THEO. H. McCALEB, [SEAL.]
U. S. Judge.

I, Edmund Randolph, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do certify, that the foregoing one hundred and seven pages contain a full, true, and complete transcript of the record and proceedings in the case of David Griffey vs. Frederick D. Conrad, so far as the same remain on file and of record in this office, together with transcript of the letter referred to in defendant's bill of exceptions, and herein inserted by direction of defendant's counsel.

In testimony whereof I have hereunto set my hand and seal of said court, at New Orleans, this tenth day of August, A. D. 1849.

EDMUND RANDOLPH, *Clerk.*
Per J. W. GURLEY, *Dep. Clerk.*

United States of America, circuit court of the United States, for the fifth circuit and eastern district of Louisiana.

I, Theodore H. McCaleb, United States judge for the eastern district of Louisiana, do hereby certify, that Edmund Randolph, whose name is signed to the above certificate, as clerk of the circuit court of the United States for the eastern district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

I further certify, that J. W. Gurley, who signed said Edmund Randolph's name as clerk, was, at the time of signing the same, the duly appointed and qualified deputy clerk of said Edmund Randolph.

Given under my hand and seal, at New Orleans, in the eastern district of Louisiana, this tenth day of August, A. D. 1849.

THEO. H. McCALEB. [SEAL.]

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the 5th circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between David Griffey and F. D. Conrad, a manifest error hath happened, to the great damage of the said F. D. Conrad, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 1st day of March, in the year of our Lord one thousand eight hundred and forty-nine.

ED. RANDOLPH,
Clerk of the United States circuit court and the district of Louisiana.

Filed March 2d, 1849.

ED. RANDOLPH, *Clerk.*

The United States of America, to David Griffey, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the 5th circuit and district of Louisiana, wherein F. D. Conrad is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 1st day of March, in the year of our Lord one thousand eight hundred and forty-nine. And returned.

THEO. H. McCALEB,
U. S. Judge.

Marshal's Return.

Received 2d March, 1849, and on the same day served copy of the within citation in error on Thomas J. Durant, esq., plaintiff's attorney, by handing the same to him in person, at New Orleans.

W. W. BUTLER,
Deputy U. S. marshal.